

Supreme Court of the United States

CHARLES E. DUNN, AS TRUSTEE OF THE
PROPERTY OF THE CHICAGO AND NORTH
WESTERN RAILWAY COMPANY, APPELLANT.

THE UNITED STATES OF AMERICA AND INTER-
STATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS

FILED MAY 21 1942

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 70

CHARLES M. THOMSON, AS TRUSTEE OF THE
PROPERTY OF THE CHICAGO AND NORTH
WESTERN RAILWAY COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND INTER-
STATE COMMERCE COMMISSION

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THE NORTHERN DISTRICT OF ILLINOIS

INDEX.

	Original	Print
Record from D. C. U. S., Northern District of Illinois	1	1
Caption..... (omitted in printing) ..	1	
Complaint.....	3	1
Exhibit No. 1—Report and order of I.C.C., Nov. 26, 1941, Docket No. MC-42614.....	22	15
Exhibit No. 2—Order of I.C.C. denying petition for reargument etc., Nov. 2, 1942.....	35	24
Exhibit No. 3—Agreement between Chicago and North Western Ry. Co. and F. Landon Cartage Co., Dec. 14, 1931.....	36	25
Answer of I.C.C.....	41	29
Exhibit "A"—Report of I.C.C., Nov. 26, 1941, Docket No. MC-42614 (copy)..... (omitted in printing) ..	46	
Answer of United States.....	58	32
Order setting hearing on motion for interlocutory injunction ..	63	35

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Record from D. C. U. S., Northern District of Illinois—
Continued

Original Print

Statement of evidence.....	66	36
Caption and appearances.....	66	36
Colloquy between Court and counsel.....	67	36
Offers in evidence.....	76	41
Plaintiff's exhibits:		
No. 1—Transcript of hearing before I.C.C., Docket No. MC-42614.....	86	45
Caption and appearances.....	86	45
Testimony of George W. Hand—		
Direct.....	94	50
Cross.....	106	57
S. E. Gregory—		
Direct.....	109	59
Cross.....	138	77
W. W. Starr—		
Direct.....	148	81
Cross.....	168	97
Redirect.....	194	114
Fred L. Leicht—		
Direct.....	208	123
Cross.....	225	134
Nos 1-A—Exhibits before I.C.C. in Docket No. MC-42614.....	228	135
1—Statement listing routes over which au- thority is sought.....	229	136
2—System map of C. & N. W. Ry.....	230	136
3—Highway map with routes marked thereon (omitted in printing).....	231	
4—Statement prepared by S. E. Gregory showing results of investigation of applica- tion.....	232	138
5—Jumbo supplement to all tariffs issued by C. & N. W. Ry. Co. which name less than carload rates.....	341	142
6—Agreement between C & N. W. Ry Co. and Leicht Transfer & Storage Co., June 25, 1934.....	343	145
No. 2—Order of I.C.C., Feb. 24, 1938, setting proceeding for hearing before Commission.....	347	145
Stipulation re certain facts.....	350	147
Exhibit—Application before I.C.C.....	352	148
Findings of fact and conclusions of law.....	356	150
Order dismissing complaint.....	359	152
Notice of motion to amend findings, conclusions and order.....	361	152
Affidavit of George W. Hand.....	368	157
Order granting stay and amending findings and judgment accordingly.....	372	158
Petition for appeal, assignments of error and prayer for reversal.....	375	159

INDEX

iii

Record from D. C. U. S., Northern District of Illinois—
Continued

	Original	Print
Order allowing appeal and approving bond.....	383	
Supersedeas bond on appeal..... (omitted in printing) ..	386	
Stipulation as to record on appeal.....	403	166
Citation..... (omitted in printing) ..	407	
Clerk's certificate..... (omitted in printing) ..	406	
Statement of points to be relied upon and designation of parts of record to be printed.....	408	168
Order noting probable jurisdiction.....	416	173

[fols. 1-2]

[Caption omitted]

[fol. 3] **IN DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

Civil Action No. 4955

(Equitable Relief Sought)

CHARLES M. THOMSON, as Trustee of the Property of Chicago and North Western Railway Company, a Corporation, Plaintiff,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

COMPLAINT—Filed December 30, 1942

To the Judges of the District Court of the United States in and for the Northern District of Illinois, Eastern Division:

Comes now the plaintiff, Charles M. Thomson, as Trustee of the property of the Chicago and North Western Railway Company, and for cause of action herein alleges and shows the Court:

I

The Chicago and North Western Railway Company, hereinafter referred to as the Railway Company, is a corporation duly organized and existing under and by virtue of the laws of the states of Illinois, Wisconsin, and Michigan, and for many years prior to June 28, 1935, was engaged in operating a railroad into and through the states of Illinois, Wisconsin, Michigan, Minnesota, Iowa, Nebraska, Wyoming, South Dakota, and North Dakota as a common carrier [fol. 4] by railroad in interstate commerce, with its main offices and principal place of business in the city of Chicago and state of Illinois, and up to said date was, as a common carrier of freight by railroad, subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to Regulate Commerce," commonly known as the Interstate Commerce Act (24 Stat. 379), and amendatory and supplemental acts known as Transportation Act, 1920

(41 Stat. 456, 474) and Transportation Act, 1940, Part I (54 Stat. 899-919); and in so far as the Railway Company's operations involved common carriage of freight by motor vehicles it was subject to the act of Congress known as Motor Carrier Act, 1935 (49 Stat. 543), also known as Part II of said Interstate Commerce Act.

II

On June 28, 1935, the Railway Company instituted a proceeding in the District Court of the United States for the Northern District of Illinois, Eastern Division, pursuant to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, which proceeding is still pending and is entitled, "In Proceedings for the Reorganization of a Railroad. In the Matter of Chicago and North Western Railway Company, Debtor", Docket No. 60448. In said proceeding the business, property, and affairs of said Railway Company, as the debtor named therein, have been and are still being administered under and pursuant to the orders of the Court. Plaintiff, Charles M. Thomson, is now and since July, 1939, has been the duly appointed, qualified and acting trustee of the property of said debtor, and as such has been and now is operating its railroad system and properties and conducting its business as a common carrier of persons and property in interstate commerce in the states above named, subject to the aforesaid acts of Congress.

[fol. 5]

III

Defendant Interstate Commerce Commission, hereinafter referred to as the Commission, is a public body created by the aforesaid Act to Regulate Commerce and authorized by the Congress in said act and amendatory and supplemental acts to exercise under the standards and limitations therein prescribed certain administrative powers.

IV

This is a civil action, brought under authority of the Urgent Deficiencies Act of 1913 (38 Stat. 219; 28 U. S. C. sections 41 (28), 43, 44, 45, 45a and 48) and section 205 (h) of the Motor Carrier Act, 1935, rearranged by the Transportation Act of 1940 as section 205 (g) of Part II of the Interstate Commerce Act (49 U. S. C. section 305 (g)), to

annul, set aside, and enjoin an order entered by said Commission under date of November 26, 1941, denying plaintiff's application, as amended, under the said Motor Carrier Act, 1935 (49 Stat. 543, 551, 49 U. S. C. sections 306 (a) and 307 (a)), for a certificate of public convenience and necessity authorizing continuance of operations previously instituted by the Railway Company as a common carrier by motor vehicle in interstate or foreign commerce of general commodities between a number of plaintiff's railway stations in Illinois, Iowa, Nebraska, Wisconsin, Michigan, and South Dakota. Said proceeding is known as Docket No. MC 42614, *Chicago & N. W. Ry. Co. Common Carrier Application*, and is reported in 31 M. C. C. 299. Copies of said report and order are attached hereto as Exhibit No. 1. By subsequent orders the Commission denied plaintiff's petition for reargument and reconsideration or rehearing, but modified said order so as to postpone the effective date [fol. 6] thereof. A copy of the last such postponing order is hereto attached as Exhibit 2 and, as thereby modified, the order of November 26, 1941, now becomes effective January 1, 1943. A petition for a further postponement because of the sudden and serious illness of counsel filed in plaintiff's behalf on December 10, 1942, was denied by the Commission under date of December 21, 1942, and a copy of such order first received by plaintiff's counsel December 28, 1942.

Said application for a certificate of public convenience and necessity was filed with the Commission on February 11, 1936, by one Charles P. Megan, plaintiff's predecessor as trustee of said Railway Company's property, and both plaintiff and said predecessor and also the Railway Company were and are residents of the Northern District of Illinois, Eastern Division.

V

Prior to the enactment of Motor Carrier Act, 1935, and as early as 1928 the Commission investigated and reported to Congress with respect to motor vehicle transportation within the United States, the participation of common carriers by railroad therein and the need for Congressional legislation with respect thereto. In such reports the Commission encouraged and approved the use by rail-carriers of motor transportation in coordination with, and supple-

mental to, their rail service, such as that employed by plaintiff, hereinafter described. Referring to the experimental operations of motor vehicles by railroads the Commission, in 1928, in *Motor Bus and Motor Truck Operation*, 140 I. C. C. 685, 745, said:

“Railroads, whether steam or electric . . . subject to the interstate commerce act, *should be authorized to engage in interstate commerce by motor vehicles on the public highways*, . . .” (Emphasis supplied.)

[fol. 7] And again in *Coordination of Motor Transportation*, 182 I. C. C. 263, 375, decided April 6, 1932:

“The Railroads have undertaken to test the possibilities of trucks and other new facilities for use in conjunction with rail service; *their use of trucks in substitution for train service in areas of light traffic has been uniformly beneficial in reducing costs and improving service*; . . .” (Emphasis supplied.)

In the last mentioned report the Commission noted particularly arrangements of the kind made use of by plaintiff and his predecessors, as hereinafter described, for obtaining vehicular equipment and therewith rendering common carrier transportation service. The Commission, after noting that highway trucking by rail carriers conducted entirely independent of their rail service is limited and that the preponderance of railroad truck operations is through the means of wholly owned subsidiaries, said (375-6):

“*There is also a substantial amount of truck operation under contracts with independent truckers.* For example, the station-to-station service in lieu of local freight trains is quite extensively in use by the New York Central and Pennsylvania, as well as rather extensive terminal operations, such as those at New York and St. Louis.” (Emphasis supplied)

In the same report in the year 1932 the Commission expressed the conclusion that the rail carriers “should be encouraged in the use of” transportation by motor vehicles over the public highways “wherever such use will promote more efficient operation or improve the public service” (182 I. C. C. 379) and among its recommendations for legislation was the following (p. 385):

"That certificates should be issued as a matter of course to bona fide operators who have been in business for a stated length of time prior to the effective date of the regulatory act, provided they comply with all other applicable provisions of the act."

In the Forty-Sixth Annual Report to the Congress, dated December 1, 1932, the Commission said, at page 21 :

[fol. 8] "In our judgment there is great opportunity for the advantageous use of motor trucks and busses to supplement or in substitution for railroad service, and we *welcome* the numerous experiments which are being made in this direction." (Emphasis supplied)

In the Fifty-Second Annual Report to the Congress, dated November 1, 1938, the Commission said, at page 13 :

"Many railroads are using trucks in lieu of local way-freight service *with much advantage*. (Emphasis supplied)

During the period when the Commission was publicly encouraging this experimental supplemental and coordinated rail-motor service the Railway Company commenced the transportation of freight by motor vehicle between cities or towns on routes briefly described in the following table :

Route No.	Explanation of Route Numbers	Date Started
1	Between St. Charles and Geneva, Ill.	Aug. 31, 1933
2	Between Rochelle and Creston, Ill.	May 1, 1935
3	Between Rochelle and Ashton, Ill.	May 1, 1935
4	Between Dixon and Franklin Grove, Ill.	May 1, 1935
5	Between De Kalb and Malta, Ill.	May 1, 1935
6	Between Council Bluffs, Ia., and Omaha, Neb.	July 7, 1931
7	Between Wausau and Rothschild, Wis.	Nov. 10, 1933
8	Between Hurley, Wis., and Ironwood, Mich.	Oct. 23, 1934
9	Between Marinette, Wis., and Menominee, Mich.	Sept. 14, 1933
10	Between Marinette, Wis., and Escanaba, Mich.	Jan. 15, 1935
11	Between Sheboygan and Green Bay, Wis.	June 25, 1934
12	Between Fond du Lac and Green Bay, Wis.	June 25, 1934
13	Between Green Bay and Clintonville, Wis.	Mar. 25, 1935
14	Between Green Bay, Wis., and Menominee, Mich.	June 25, 1934
15	Between Deadwood and Lead, S. Dak.	Oct. 1, 1933
17	Between Proviso and Woodstock, Ill.	May 17, 1933
18	Between Proviso and Algonquin, Ill.	May 17, 1933
19	Between Proviso and De Kalb, Ill.	July 9, 1934
20	Between Proviso and Belvidere, Ill.	Dec. 14, 1931
21	Between Proviso and Waukegan, Ill.	Dec. 4, 1931
22	Between Proviso and Chicago, Ill.	Dec. 4, 1931
23	Between Proviso and West Chicago Ill.	April 2, 1934

Transportation of freight by motor vehicle has been performed by plaintiff and his predecessors for the public as a common carrier, between the above stated points and intermediate points continuously since the respective dates above shown and up to and including the present time.

[fol. 9] During the aforesaid period, plaintiff's predecessors in establishing routes for the transportation of freight by motor vehicle in coordination with rail service were confronted always by the statutory requirement of economical and efficient management included in the original section 15a of Transportation Act, 1920, and carried forward in subsequent amendments thereof (41 Stat. 448, 48 Stat. 220, 54 Stat. 912, 49 U. S. C. sec. 15a). In view of the inherent uncertainties and the experimental character of such enterprises, it was considered essential to avoid purchasing at great expense large quantities of equipment providing additional facilities and adding to the payroll, with attendant expense and complications, a large number of new employees, particularly during a period of declining traffic and inadequate revenues. In view of these circumstances, plaintiff's predecessors adopted the contract plan, referred to in the above quoted excerpt from the Commission's report in Coordination of Motor Transportation, as most economical and efficient under the circumstances for carrying out these experiments in supplemental and coordinated rail and motor service.

Pursuant to this plan, the Railway Company entered into written contracts or agreements with certain possessors of motor vehicle equipment and personnel, herein referred to as Contractors, under which the Contractors agreed to furnish such motor vehicle equipment and employees to operate same as might be necessary to move freight in plaintiff's possession as a common carrier between plaintiff's freight stations at the aforesaid points. By this method the Railway Company was, and the plaintiff now is, enabled to obtain the use of vehicles and drivers at a minimum of expense. A representative copy of such a form of contract is attached hereto as Exhibit No. 3.

These Contractors furnishing the vehicles had and still [fol. 10] have no contractual arrangements of any kind with the shippers or receivers of the freight hauled by them under the aforesaid contracts and were not common carriers of said freight. Under the foregoing contractual ar-

arrangements the Railway Company formerly and now your plaintiff have at all times received, transported, and delivered the freight as a common carrier and stood in that relation to the shipper and receiver throughout the entire transaction from the receipt of the freight from the consignor to ultimate delivery to the consignee.

All the freight transported in these motor vehicle operations was transported and is still being transported between the Railway Company's freight stations on railway billing. Charges were and are assessed according to applicable railroad tariff schedules which, with approval of the Commission, have been amended so as to permit substitution of highway vehicle service for available railroad service between railroad freight stations at the option of the transporting railroad. So far as the public was and is concerned the only transportation agency appearing in the transaction and the only one to whom the public may look in connection with claims and kindred matters was and is the Railway Company and the plaintiff. The accounting in all respects was and is the same as though the shipments had moved actually all the way by rail.

The Railway Company had and the plaintiff has, under the said contractual arrangements, direct and complete control of the movement and handling of the freight, which was exclusively between plaintiff's freight stations. Schedules were and are fixed by the Railway Company and the plaintiff to coordinate with rail schedules, the amount and particular shipments of freight to be moved were as designated and the contractor was and is obliged to conform to [fol. 11] changes as made from time to time by the Railway Company and the plaintiff.

No billing of any kind was or is issued by the contractors. Trucks were and are loaded at stations by employees of the Railway Company and plaintiff, sometimes assisted by the driver of the truck. After loading a manifest was and is issued by the Railway Company's employees, signed by the driver, and upon delivery to the Railway Company's freight stations the railroad agent signs the manifest, thus releasing the contractor.

In transporting this freight the Railway Company and plaintiff have at all times made use of its railroad facilities and entire organization, such as stations, platforms, telegraph and telephone installation, station agents and generally, among others, the personnel of the Operating, Traffic,

and Claim Departments. At points of origin and destination the freight was and is subject to privileges and arrangements named in railroad tariff schedules, the same as other rail freight.

VI

The Congress, with presumptive and actual knowledge from official reports of the attitude of its established agency, the Interstate Commerce Commission, towards railroad experiments in coordinated rail and motor vehicle service, enacted the Motor Carrier Act, 1935. Section 206 of that act, as amended (49 U. S. C. sec. 306), provides that no common carrier by motor vehicle subject to Part II of the act shall engage in any interstate operation on any public highway, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operation. This section includes a proviso known as the "grandfather clause," which in substance is that if any carrier or its predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, the Commission shall issue a certificate of public convenience and necessity without requiring further proof that public convenience and necessity will be served by the operation, and without further proceedings upon the making of an application within one hundred and twenty days from the effective date of said act in form as required by the Commission's regulations; otherwise such application shall be decided in accordance with section 207 (a) of the said act (49 U. S. C. sec. 307 (a).) and be granted only if it is found by the Commission that the applicant is fit, willing and able to perform the service proposed, conform to the provisions of the act and regulations of the Commission thereunder and that the proposed service is or will be required by the present or future public convenience and necessity. Pending determination of any such application continuance of such existing operations was, by section 206, made lawful.

In the same act (sec. 203 (14) (49 Stat. 544) the Congress defined a common carrier by motor vehicle as follows:

"The term 'common carrier by motor vehicle' means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport

"passengers or property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes, *including such motor vehicle operations of carriers by rail or water*, and of express or forwarding companies, except to the *except to the* extent that these operations are subject to the provisions of part I." (Emphasis supplied)

[fol. 13] The provision just quoted was reworded in Transportation Act, 1940 (54 Stat. 920, 49 U. S. C. 303), but plaintiff alleges that the reworded provision is irrelevant herein for three reasons: (1) The definition above quoted was in force when the case was heard by the Commission, (2) the change in wording is of no consequence, and (3) if it were otherwise, under established principles of law the amendment could not be regarded as having retroactive application to the detriment of grandfather rights which attached and accrued under the provisions of Motor Carrier Act, 1935.

VII

Application was duly made to the Commission by plaintiff's predecessor within the time and in form and substance as prescribed by said section 206. At the hearing upon said application, held by an Examiner of the Commission, the foregoing facts as to said predecessor's motor vehicular operations were fully shown to the Commission by undisputed evidence and further undisputed evidence was adduced at the hearing establishing that the applicant was fit, willing and able properly to perform the aforesaid service then in existence and proposed to be continued in the future and to conform to the provision of the Motor Carrier Act and the requirements, rules and regulations of the Commission thereunder, and that such proposed service was and would be required by the present and the future public convenience and necessity.

VIII

The aforesaid hearing took place on March 28, 1938, and the matter was argued before Division 5 of the Commission on April 19, 1939. Thereafter, on July 20, 1939, plaintiff succeeded said Charles P. Megan, as trustee of the property of Chicago and North Western Railway Company and, as such trustee, succeeded to all rights under the aforesaid

application and thereafter participated as the applicant in [fol. 14] said proceedings before the Commission. The matter was decided by Division 5, consisting of three Commissioners, by report and order entered on November 26, 1941, denying the application as to the operations involved in this suit (referred to in the report as the application for "grandfather" rights), but granting certificates for certain other operations (Ex. 1, hereto attached). Commissioner Eastman, then Chairman and now Director of Office of Defense Transportation, dissented, stating his opinion that the so-called "grandfather" application should be granted rather than denied, for reasons previously expressed by him in *Missouri Pacific R. Co. Common Carrier Application*, 22 M. C. C. 321, 333, wherein he pointed out, under contractual arrangements practically identical with those set up in this complaint, that the applicant railroad was the carrier, assuming full responsibility as to all the duties and obligations to the shippers, and that this providing of the motor vehicular service through the means of "independent contractors" came within the category of an "other arrangement" contemplated and authorized by section 203 (a) (14) of the Motor Carrier Act. The majority of the Division, although finding that the application involves transportation by motor vehicle between the Railway Company's stations, a service auxiliary to or supplemental of and coordinated with the railway service, denied the application on the arbitrary theory, unsubstantiated by evidence of record, that the motor vehicle operations involved in the application have been and are those of others as common carriers by motor vehicle in their own right and not those of the Railway Company. By virtue of the subsequent orders mentioned in section IV hereof, the said order of denial becomes effective [fol. 15] January 1, 1943. The effect of the order is to require plaintiff to discontinue and terminate all operations listed on page 6 of this complaint, which operations have provided transportation service to the public for from 7 to 11 years.

IX

First, the aforesaid report and order of the Commission are unreasonable, arbitrary, contrary to law and the undisputed evidence of record, and in excess of the Commission's powers and authority, fundamentally because it misinterprets and misapplies the act in two vital respects: (1)

It denies meaning and effect to specific words in section 203 (a) (14); and (2) reads into that section standards not included therein by the Congress.

The Commission's decision is basically erroneous and contrary to law in assuming that a common carrier must own the vehicles outright or obtain them by what is equivalent to a lease. As already stated above, the Congress in section 203 (a) (14) of the Motor Carrier Act, 1935, defined the term "common carrier by motor vehicle" as "any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or property, . . . for the general public . . . by motor vehicle for compensation, . . . including such motor vehicle operations of carriers by rail . . .". The Commission's report and order, Exhibit 1, deny effect to the words "or any other arrangement" immediately following the reference to a lease. They deny effect also to the reference in the statute to motor vehicle operations of carriers by rail notwithstanding the fact that the Congress, having in mind the published official reports of the Commission which noted with approval the experiments of rail carriers in [fol. 16] connection with motor vehicle operations and described operations carried on by use of equipment furnished by contractors, plainly intended to include within the scope of this provision the class of coordinated and supplementary rail-motor operations here under consideration.

The order applies the statutory provision quoted in the same manner as it would in the event the expression "or any other arrangement" were not included in the section. Notwithstanding the fact that the Congress in section 203 (14) had legislatively defined the expression "common carrier by motor vehicle" as used in section 206 (a), the Commission, by a process of construction based on irrelevant considerations, applied the act in a manner different from the plainly stated intent of the Congress. The Commission in effect has discarded standards prescribed by the Congress and has resorted to arbitrary and unlawful standards of its own.

X

The aforesaid report and order are otherwise unreasonable, unlawful, and unsupported by and contrary to the undisputed evidence, and the Commission misconstrued the

law and the record and exceeded its powers and authority, as follows:

1. In finding that the Railway Company and the applicant did not operate motor vehicles, either as owner or under a lease, or any other equivalent arrangement.

2. In finding that contracts with certain owners of motor vehicles impose upon them obligations ordinarily assumed by common carriers by motor vehicle, and in basing its conclusions upon provision of the contracts which are of no significance and not controlling of the issues here presented.

3. In finding that the vehicles were under the direction [fol. 17] and control of the contractors, notwithstanding the evidence of record is that in every actual and legal sense material to this inquiry the Railway Company and the applicant directed and controlled the vehicles in the transportation of this freight for the public.

4. In holding that the contractors were responsible to shippers of the freight, whereas the record shows that the shippers' arrangements and contracts for the transportation of the freight were and are solely with the Railway Company and the applicant to the exclusion of the contractors.

5. In finding that the operations considered were those of the contractors as common carriers by motor vehicle in their own right, notwithstanding the fact that the record shows that, because of the absence of the essential elements of common carriage, it cannot be found that these contractors were common carriers of this traffic.

6. In requiring plaintiff (as the applicant) to discontinue operations which he and his predecessors have been conducting for the public for a period of years, the effect of the order being to deprive plaintiff of property without due process of law and the public of a useful and urgently needed service.

7. In going outside the record and denying the entire application on the assumption, unsupported by evidence of record, that all the so-called contractors were established truckers who had filed applications claiming grandfather rights.

8. In basing the order on inadequate and insufficient findings of fact, particularly in denying the entire application on the theory that each of the so-called contractors were

[fol. 18] common carriers of this traffic without a specific finding as to each of the contractors involved in the several widely separated operations.

9. In failing to hold that, in view of the theory of the report and order that the Railway Company was not a common carrier, the transportation was rendered by the Railway Company as a private carrier and thus is not subject to regulation.

10. In completely disregarding and failing to give any consideration or legal effect to plaintiff's claim of right to a certificate of public convenience and necessity and the undisputed evidence supporting such right, under sections 206 and 207, Motor Carrier Act, and independent of the claimed right under the so-called "grandfather" provisions; and in failing to grant a certificate of public convenience and necessity for proposed future operations by plaintiff independent of the "grandfather" rights.

XI

If the order of the Commission herein complained of be permitted to become effective it will cause plaintiff great and irreparable injury and damage, because unless restrained by this Court, plaintiff on January 1, 1943, must either comply with the Commission's order by ceasing to transport freight in coordinated or supplemental rail-motor service between freight stations on the line of the Railway Company on the routes above described or plaintiff and his agents will be subjected to the imminent possibility of prosecution for and attempted imposition of the severe penalties provided by law for failure to observe the Commission's orders. The effect of discontinuing such transportation service [fol. 19] will be to deprive plaintiff of a substantial volume of traffic and earnings therefrom and further to prevent plaintiff from making the most efficient and effective use of existing railroad facilities and personnel of which there is a serious shortage in the present national war emergency. The volume of merchandise freight traffic now transported by plaintiff through the said motor vehicle service is in excess of 150,000,000 pounds, annually, and is increasing at the present time. Compliance with the Commission's order would result in the loss of a very large proportion of this traffic because Order No. 1 issued by the Office of Defense Transportation prohibits movement of merchandise freight in carloads of less than ten tons, and the daily movements of

freight here involved are for the most part less than that amount, being individually small-quantity, short-haul movements handled more economically by truck than by rail. The loss of revenue following such loss of freight, as well as the increased cost of handling what remained thereof by rail would aggregate many thousands of dollars per year.

Compliance with the order would also destroy the plaintiff's rights under the existing contracts and completely disrupt and destroy the existing and long continued arrangements under which this merchandise freight is now being economically and efficiently handled, which it would be impossible for plaintiff to reinstate at a later date except at great additional expense, so that in the event the Commission's order be set aside on final hearing of the cause, great and irreparable injury, aggregating many thousands of dollars, will be sustained by plaintiff unless a temporary restraining order be granted immediately as prayed for herein.

Also, the public will thereby be denied the opportunity of [fol. 20] making use of what the Commission has recognized (*Seaboard Air Line Motor Operation-Gaston-Garnett*, 17 M. C. C. 413, 432. *Willett Co. of Indiana, Inc., Extension-Ill., Ind., and Ky.*, 21 M. C. C. 405, 408. *Chicago & N. W. Ry. Co. Extension-South Dakota*, 30 M. C. C. 379. *Chicago & N. W. Ry. Co. Extension of Operations-Iowa*, 31 M. C. C. 455) as a new form of service utilizing both rail and motor vehicle transportation to advantage, and in such a way as to render a merchandise service which is much less expensive and at the same time more expeditious and more convenient and generally satisfactory to the public served.

Plaintiff has no plain, adequate or complete remedy at law in the premises.

Wherefore, plaintiff prays:

1. That upon plaintiff's application, hereby made, this Court issue herein an interlocutory injunction suspending and restraining the enforcement, operation and execution of said denial order effective January 1, 1943, and that defendants, their officers and agents, thereby be enjoined and restrained from enforcing or attempting to enforce such order pending the final determination of this cause.

2. That pending a hearing upon the aforesaid application for an interlocutory injunction a preliminary restraining

order be issued in terms restraining, staying, and suspending the operation, execution, effect and enforcement of said order of the Commission until said application for an interlocutory injunction shall have been heard and determined.

3. That upon final hearing herein a decree be entered setting aside and annulling, and perpetually enjoining the [fol. 21] enforcement of said order of the Commission in so far as it denied the application designated in its report as No. MC 42614, and that by such decree defendants, their officers and agents be perpetually enjoined and restrained from enforcing or attempting to enforce said order.

4. That the plaintiff have such other and further relief in the premises as the Court shall deem just and equitable.

Charles M. Thomson, Trustee of the Property of Chicago and North Western Railway Company.

Nye F. Morehouse, P. F. Gault, Attorneys for Plaintiff,
400 W. Madison St., Chicago, Ill.

Duly sworn to by Charles M. Thomson. Jurat omitted in printing.

[fol. 22]

EXHIBIT NO. 1 TO COMPLAINT

M-5785

Interstate Commerce Commission

No. MC-42614¹

Chicago and North Western Railway Company (Charles M. Thomson, Trustee) Common Carrier Application

Submitted April 19, 1939. Decided November 26, 1941

1. In No. MC-42614, applicant found to have failed to establish the right to a certificate under the "grandfather"

¹ This report also embraces No. MC-42614 (Sub-No. 1), Chicago and North Western Railway Company (Charles M. Thomson, Trustee) Extension of Operations—Illinois, Iowa, and Wisconsin; No. MC-42614 (Sub-No. 3), Chicago and North Western Railway Company (Charles M. Thomson, Trustee) Extension of Operations—Adams—Wisconsin Rapids; and No. MC-42614 (Sub-No. 4), Chicago and North Western Railway Company (Charles M. Thomson, Trustee) Extension of Operations—De Kalb-Sycamore.

clause of section 206 (a) of the Interstate Commerce Act as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities between certain points in Illinois, Iowa, Nebraska, Wisconsin, Michigan, and South Dakota, over regular routes. Application denied.

2. In No. MC-42614, subnumbers 1 and 3, public convenience and necessity found to require operation, subject to certain conditions, by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, over specified routes between certain points on applicant's railway lines in Illinois, Iowa, and Wisconsin. Issuance of a certificate, subject to conditions, approved upon compliance by applicant with certain requirements, and applications in all other respects denied.

3. In No. MC-42614, subnumber 4, public convenience and necessity found to require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities which are at the time in the primary custody of and moving on bills of lading of a railway express company, and of newspapers between De Kalb and Sycamore, Ill., over specified route. Issuance of a certificate approved upon compliance by applicant with certain conditions.

P. F. Gault, Weldon Dayton, S. E. Gregory, and Llewellyn Cole for applicant.

Earl N. Cannon, Earl Girard, David Axelrod, Floyd F. Shields, Kenneth W. Munsert, Harry M. Slater, Glenn W. Stephens, and Roland W. Rice for protestants.

Walter McFarland, James A. Gillen, B. M. Richardson, and H. C. Marcusen for interveners.

Report of the Commission

Division 5, Commissioners Eastman, Lee and Rogers

By Division 5:

In No. MC-42614, exceptions were filed by applicant to the recommended order of the examiner, protestants replied, and the parties were heard in oral argument. In No. MC-42614 (Sub-No. 1), exceptions were filed by protestants to the recommended order of the joint board,

and applicant replied. No exceptions were filed to the recommended order of the joint board in No. MC-42614 (Sub-No. 3) and of the joint board in No. MC-42614 (Sub-No. 4), but we stayed the recommended orders. Our conclusions differ somewhat from those recommended in all except No. MC-42614.

In No. MC-42614, by application filed February 11, 1936, as amended, Charles M. Thomson, trustee of the property of the Chicago and North Western Railway Company, hereinafter called the railway, of Chicago, Ill., seeks a certificate of public convenience and necessity under the "grandfather" provisions of section 206 (a) of the Interstate Commerce Act authorizing continuance of operation as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities between a number of applicant's railway stations in Illinois, Iowa, Nebraska, Wisconsin, Michigan, and South Dakota, over specified routes. In No. MC-42614 (Sub-No. 1), by application filed February 12, 1936, as amended, the same applicant seeks similar authority to continue operations commenced between June 1 and October 15, 1935, between certain railway stations in Illinois, Iowa, and Wisconsin, over routes 1 to 4, inclusive, shown in the appendix. In No. MC-42614 (Sub-No. 3), by application filed August 2, 1937, the same applicant seeks similar authority to engage in operation between certain of the railway stations in Wisconsin over routes 5 and 6 as shown in the appendix. In No. MC-42614 (Sub-No. 4), by application filed October 25, 1937, as amended, the same applicant seeks similar authority to engage in the transportation of general commodities consisting entirely of express and newspapers between De Kalb and Sycamore, Ill., over route 7 as shown in the appendix. A number of motor carriers and motor-carrier associations oppose the applications other than No. MC-42614 (Sub-No. 4). The Chicago, Burlington & Quincy Railroad Company intervened in No. MC-42614, and the Iowa Commerce Commission and Iowa Freight Lines, Inc., intervened in No. MC-42614 (Sub-No. 1).

All the applications involve transportation by motor vehicle between applicant's railway stations in rendering a service which is or will be auxiliary to or supplemental of and coordinated with the railway service. Except in the case of express matter, all of the operations relate to traffic

obtained by applicant, moving at applicant's rail rates, and under rail billing. Express matter will move under appli- [fol. 24] cant's outstanding contract and established arrangements with the Railway Express Agency, Inc., at rates provided for in the latter's published tariffs.

No. MC-42614.—The motor-vehicle operations involved in this application were commenced prior to June 1, 1935, but at all times have been performed by others, hereinafter referred to as the contractors, under contract with applicant. Applicant does not operate motor vehicles either as owner or under lease or any other equivalent arrangement. On the whole, the contractors were established truckers selected by applicant to perform the service and who perform service for others than applicant and have filed applications claiming "grandfather" rights thereto.

Copies of existing contracts were submitted in evidence. They are so framed as to impose upon the contractors, and not applicant, the obligations ordinarily assumed by common carriers by motor vehicle. They provide, among other things, that the contractor shall furnish the motor vehicles, operate them in the contractor's own name, and not display applicant's name on them; that the contractor shall employ, direct, and control the drivers; that the contractor shall assume the status of an independent contractor; that the contractor's liability for the freight while in his possession shall be that of an insurer; that the contractor shall comply with all State and Federal regulations; and that the contractor shall protect, indemnify, and save applicant harmless against any and all loss and damage by reason of the operation, and shall also authorize applicant to carry insurance protecting him against any claims whatsoever arising out of the contractor's operations and to deduct from the latter's compensation the approximate cost of such insurance. These, as well as other provisions in the contracts, establish that the motor vehicles are to be supplied by the contractors and operated under their direction and control and under their responsibility to the general public as well as to the shippers. It is clear, therefore, that the motor-vehicle operations have been and are those of others as common carriers by motor vehicle in their own right and not those of applicant. See *Willett Co. of Indiana, Inc., Extension*—Ill., Ind., and Ky., 21 M. C. C. 405. It follows that the application must be denied.

No. MC-42614 (Sub-No. 1).—This application covers operations commenced between June 1 and October 15, 1935, over four short, disconnected routes—two in Wisconsin and one each in Iowa and Illinois—performed by four contractors under contracts with the railway similar to those previously discussed. The joint board recommended that a certificate be granted. There is no question that applicant is fit, willing, and able properly to perform the service.

Protestants contend that applicant failed to show that [fol. 25] public convenience and necessity require the service, in that no shipper witness testified in support of the application and applicant made no attempt to show that the existing motor-carrier service is inadequate. On the other hand, they assert that such service will affect the operations of existing motor carriers, and that applicant has made no attempt to secure coordinated rail and motor-carrier service with the existing motor carriers. They urge that the joint board failed to give proper consideration to the service of existing motor carriers, and they take exception to the statement of the joint board that the status of the independent contractors is not here in issue.

None of the contractors has filed applications predicated upon the operations performed under contract with the railway. Two have filed no applications with this Commission. The other two are motor carriers in their own right. One filed a "grandfather" application and has been issued an order authorizing continuance of such operations. The other has been issued a certificate of registration. Both were engaged in motor-vehicle operations beyond, and prior to the commencement of, the operations here in question. There is therefore no outstanding claim for authority to continue the operations in question, other than that of applicant, and the status of the contractors is not here in issue nor do they oppose the application. This is not to say that the operations in question have been conducted in the past by applicant as a motor carrier. It is to say, however, that a motor-vehicle service has been rendered in the past which applicant alone seeks authority to continue. The question is whether public convenience and necessity require continuance of such service by applicant, and, if so, whether appropriate authority should be granted; but, as protestants point out, if applicant contemplates conducting the operations by means of equipment owned by others, the

operation of such equipment must necessarily be under applicant's direction and control and under his full responsibility to the general public as well as to the shippers. See *Missouri Pac. R. Co. Common Carrier Application*, 22 M. C. C. 321.

The motor-vehicle service which has been conducted in the past, and which applicant seeks authority to continue, is auxiliary to and supplemental of applicant's railway service in the handling of less-than-carload traffic. This service is coordinated with the railway service and, in addition to movement by motor vehicle, involves a prior or subsequent movement by rail. While no shipper testimony was presented, the evidence clearly shows that these operations have resulted and will continue to result in operating economies as well as a better and more frequent and efficient service to shippers. We are of the opinion that such coordinated service is distinctly in the public interest. Applicant does not seek to enter a new field of service but to [fol. 26-27] continue a more efficient means of service than that afforded by all-rail service. It is confined strictly to rail points now served by applicant, and its continuance will not restrain competition.

It does not follow, however, that public convenience and necessity require motor-vehicle service by applicant without limitation as recommended by the joint board. The record warrants the conclusion that the services to be authorized are those which are auxiliary to, supplemental of, and coordinated with that of the railway, and the certificate herein granted covering such operations will be limited accordingly. On the whole, the facts and contentions here presented are not materially different from those considered and passed upon in the case hereinbefore cited and wherein limitations similar to those contained in our findings below were likewise provided.

[fol. 28] *In general.*—There is no question that application is fit, willing, and able properly to perform the proposed service requested in Nos. MC-42614, subnumbers 1, 3, and 4. As before stated, operations involved in No. MC-42614 (Sub-No. 1) are being performed by others under contract with applicant. The record also indicates that applicant is undetermined whether to acquire motor vehicles

of his own or utilize equipment of others. If applicant contemplates conducting the operations herein authorized by means of equipment owned by others, the operation of such equipment must be under applicant's direction and control and under his responsibility to the general public as well as to the shippers. See *Dixie Ohio Exp. Co. Common Carrier Application*, 17 M. C. C. 735.

{fol. 29] *Findings*.—In No. MC-42614, we find that applicant has not shown that he was in bona fide operation as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities between the points and over the routes requested on June 1, 1935, and continuously since; that applicant has failed to establish that he is entitled to a certificate under the "grandfather" clause of section 206 (a) of the act; and that the application should be denied.

In No. MC-42614 (Sub-No. 4), we find that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities which are at the time in the primary custody of and moving on bills of lading of a railway express company, and of newspapers, between De Kalb and Sycamore, Ill., over route 7 as shown in the appendix; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the act and our rules and regulations thereunder; and that a certificate authorizing such operations should be granted.

In Nos. MC-42614, subnumbers 1 and 3, we find that the present and future public convenience and necessity require operation by applicant as a common carrier by motor vehicle of general commodities, in interstate or foreign commerce, between the points and over the highways shown in the appendix, routes 1 to 6, inclusive, subject to the following conditions:

1. The service by motor vehicle to be performed by applicant shall be limited to service which is auxiliary to, or supplemental of, rail service of the Chicago and North Western Railway Company, hereinafter called the railway.

2. Applicant shall not serve, or interchange traffic at, any point not a station on a rail line of the railway.

3. Shipments transported by applicant shall be limited to those which move under a through bill of lading covering, in addition to movement by applicant by motor vehicle, a prior or subsequent movement by rail.

4. Such further specific conditions as we, in the future may find it necessary to impose in order to restrict applicant's operations by motor vehicle to service which is auxiliary to, or supplemental of, the rail service of the railway.

We further find that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the act and our rules and regulations thereunder; that a certificate authorizing such operations should be granted; and that the applications in all other respects should be denied.

Upon compliance by applicant with the requirements of sections 215 and 217 of the act, and our rules and regulations thereunder, appropriate certificates will be issued. [fols. 30-31] An order will be entered denying the applications except to the extent that operations are authorized herein.

EASTMAN, *Commissioner*, concurring in part:

I approve the conclusions which have been reached, except that I am of the view that the "grandfather" application should be granted rather than denied. The reasons for this view of the matter are substantially those which I expressed in a separate opinion in *Missouri Pacific R. Co. Common Carrier Application*, *supra*, pages 333-6. With respect to the conditions which are imposed in subnumbers 1 and 3, I would not ordinarily approve the one which is numbered 3, for the reasons indicated in *Kansas City S. Transport Co., Inc., Com. Cdr. Application*, 28 M. C. C. 5. In the circumstances here presented, however, this condition is not objectionable.

APPENDIX

Authority granted

Route 1. Between Sterling and Union Grove, Ill., over U. S. Highway 330 to the junction of U. S. Highway 30; thence over U. S. Highway 30 to Union Grove, serving the intermediate and off-route points of Round Grove, Morrison, Galt, and Agnew, Ill.

Route 2. Between Stanwood and Tipton, Iowa, over Iowa Highway 38.

Route 3. Between Manitowoc and Two Rivers, Wis., over Wisconsin Highway 42.

Route 4. Between Madison and Beloit, Wis., over U. S. Highway 14 to Jamesville, Wis., thence over U. S. Highway 51 to Beloit, serving the intermediate points of Oregon, Evansville, and Janesville, and the off-route point of Brooklyn, Wis.

Route 5. Between Wisconsin Rapids and Adams, Wis., over Wisconsin Highway 13.

Route 6. Between Wisconsin Rapids, and Adams, Wis., over Wisconsin Highway 54 between Wisconsin Rapids and Port Edwards, thence over Wisconsin Highway 73 via Nekoosa to the junction of said highway with Wisconsin Highway 13, thence over Wisconsin Highway 13 to Adams, serving the intermediate points of Port Edwards and Nekoosa, Wis.

Route 7. Between De Kalb and Sycamore, Ill., over Illinois Highway 23.

[fols. 32-34]

ORDER

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 26th day of November, A. D. 1941

No. MC-42614

CHICAGO AND NORTH WESTERN RAILWAY COMPANY (Charles M. Thomson, Trustee) Common Carrier Application

No. MC-42614 (Sub-No. 1)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, (Charles M. Thomson, Trustee) Extension of Operations—Illinois, Iowa, and Wisconsin

No. MC-42614 (Sub-No. 3)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, (Charles M. Thomson, Trustee) Extension of Operations—Adams Wisconsin Rapids

No. MC-42614 (Sub-No. 4)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, (Charles M. Thomson, Trustee) Extension of Operations—De Kalb-Sycamore

Investigation of the matters and things involved in these proceedings having been made, and said division, on the

date hereof, having made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof;

It is ordered, That the said applications, except to the extent granted in said report, be, and they are hereby, denied, effective December 31, 1941.

By the Commission, division 5.

W. P. Bartel, Secretary. (Seal.)

[fol. 35]. EXHIBIT No. 2 TO COMPLAINT

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 2nd day of November, A. D. 1942

No. MC-42614

CHICAGO AND NORTH WESTERN RAILWAY COMPANY (Charles M. Thomson, Trustee) Common Carrier Application

No. MC-42614 (Sub-No. 1)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, (Charles M. Thomson, Trustee) Extension of Operations—Illinois, Iowa, and Wisconsin

No. MC-42614 (Sub-No. 3)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, (Charles M. Thomson, Trustee) Extension of Operations—Adams-Wisconsin Rapids

No. MC-42614 (Sub-No. 4)

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, (Charles M. Thomson, Trustee) Extension of Operations—De Kalb-Sycamore—Chicago, Illinois

Upon consideration of the record in the above-entitled proceedings, of petition of applicant, dated December 22, 1941, for postponement of the effective date of the denial order of Division 5, for reargument and reconsideration or rehearing, in No. MC-42614; and good cause appearing;

It is ordered, That said petition be, and it is hereby denied.
It is further ordered, That the order entered in said proceedings on November 26, 1941, as subsequently modified to become effective on November 30, 1942, in so far as it denied the applications, be, and it is hereby, further modified so as to become effective on January 1, 1943.

By the Commission.

W. P. Bartel, Secretary. (Seal.)

[fol. 36] EXHIBIT NO. 3 TO COMPLAINT

This Agreement, entered into this Fourteenth day of December, 1931, between the Chicago and North Western Railway Company (hereinafter called the "Railway Company") and F. Landon Cartage Company, a Corporation, organized under the laws of the State of Illinois (hereinafter called "Contractor");

Witnesseth:

Whereas, the Railway Company desires to arrange with the Contractor for the handling of certain freight between the Railway Company's Proviso, Illinois, freight station located near Lake Street and the east limits of the City of Elmhurst, Illinois, and its freight stations at the following points:

Norwood Park, Des Plaines, Palatine, Edison Park, Mount Prospect, Barrington, Park Ridge, Arlington Heights.

Now, Therefore, in consideration of the premises, it is hereby mutually agreed:

1-(a): The Contractor agrees to provide motor trucks or motor trucks and trailers of such type as shall be satisfactory to the Railway Company for the purpose of transporting certain of the Railway Company's freight between its Proviso freight station and its freight stations at the following points:

Norwood Park, Park Ridge, Mount Prospect, Palatine, Edison Park, Des Plaines, Arlington Heights, Barrington, daily, except Sundays and Holidays, in accordance with such schedules and instructions as shall be given by the Railway Company. The Contractor agrees to so transport such

freight as the Railway Company may designate with the trucks or trucks and trailers aforesaid in a manner satisfactory to the Railway Company.

(b): The Contractor shall employ and direct all persons operating vehicles hereunder and such persons shall be and remain the sole employes of and subject to control and direction of the Contractor and not the employes of the Railway Company, it being the intention of the parties hereto that the Contractor shall be and remain an independent Contractor and that nothing herein contained shall be construed as inconsistent with that status. The Contractor promises and agrees to conduct the work in the name of the Contractor and agrees not to display the name of the Railway Company upon or about any of the Contractor's vehicles.

(c): Any assignment of this contract by the Contractor without the written consent of the Railway Company having been first obtained, shall be void and of no effect.

2: For the faithful performance by the Contractor of the services herein provided for, the Railway Company agrees to pay and the Contractor agrees to accept as full compensation therefor the sum of Ten Cents (10¢) per hundred pounds of freight so transported by the Contractor, which payments shall be made on the twentieth day of each month for all services rendered during the preceding calendar [fol 37] month. The weights specified in the waybills of the Railway Company are to furnish the basis for payments hereunder.

If at the end of each six-month period it is found that the payments made by the Railway Company do not average Twenty-five Dollars (\$25.00) for each day freight is transported by the Contractor, the Railway Company shall pay the difference.

The Contractor shall give receipts to the Railway Company for all freight delivered to the Contractor and upon redelivery at freight stations the Railway Company shall furnish the Contractor with receipts therefor.

All loading and unloading of such freight at Proviso freight station shall be done by the Railway Company at the Railway Company's sole expense.

At the other stations named the expense of unloading and loading shall be borne solely by the Contractor. In the event said freight shall be transported by the Contractor at such

times as said stations or any of them shall be closed, the Railway Company will furnish one of its employees who shall accompany the Contractor's truck for the purpose of opening and closing stations and assisting in the unloading or loading of freight, and for this service the Contractor shall pay to the Railway Company monthly the sum of One Hundred Five Dollars (\$105.00).

3: The Contractor agrees at all times to comply with all laws of the State of Illinois and the Federal Government and all ordinances and regulations of the municipalities through which said motor vehicles are operated. Contractor expressly agrees to indemnify the Railway Company and save it harmless from any failure or default on its part in this behalf.

4: The Contractor shall be responsible to the Railway Company for all loss, damage, or delay of whatsoever kind and nature and howsoever caused, including attorneys' fees, costs, settlements, judgments, and all other expense to which the Railway Company may be subjected, on account of loss, damage, or delay to freight entrusted to the Contractor hereunder occurring while same remains in the care, custody, or control of the Contractor, or any other person to whom the Contractor may have entrusted said freight. The provisions of this paragraph shall be deemed to extend to and include freight while being loaded upon or unloaded from any vehicle of the Contractor.

5: The Contractor agrees to indemnify and save harmless the Railway Company from all liability and claims of every kind, including attorneys' fees, costs, settlements, judgments, and all other expense to which the Railway Company may be subjected on account of loss, damage or delay to all property whatsoever while such property is entrusted to the Contractor as defined in Paragraph 4 hereof, immediately preceding; also from all such liability and claims on account of loss or damage to property not being transported by the Contractor, and injury to or death of all persons whomsoever arising out of or in connection with the performance of this agreement by the Contractor, its agents or employees.

6: The Contractor agrees to indemnify the Railway Company and save it harmless from any and all claims, demands, and liabilities made upon or accruing to it on account of damages for injuries to or death of the Contractor, or any em-

[fol. 38] ploye of the Contractor, from any cause whatsoever while on or about the premises of the Railway Company or while engaged in the performance of the services aforesaid, or in any manner whatsoever in connection with the maintenance, operation or use of said motor vehicle or vehicles.

7. The Contractor hereby authorizes the Railway Company to procure and keep in full force and effect during the life of this contract, for the Railway Company's protection, public liability and property damage insurance on all of the Contractor's vehicles used by the Contractor and agents and employes of the Contractor in transporting goods under this contract, and also to procure and keep in full force and effect for the Railway Company's protection, general public liability and property damage insurance against liability for property damage, personal injury and/or death, such insurance to be in each instance not less than Twenty-five Thousand Dollars (\$25,000.00) for one person and Fifty Thousand Dollars (\$50,000.00) for more than one person in any one accident, and in the case of liability for property damage at not less than Five Thousand Dollars (\$5,000.00) for any one accident; also to procure for the Railway Company's protection, insurance against loss, damage or delay to freight; and also, against any other losses which the Railway Company may sustain on account of claims of or liability to any person or persons whomsoever other than the Contractor growing out of the performance of this contract. All such insurance shall be carried in a reliable stock insurance company.

In lieu of the insurance provided by the foregoing paragraph, the Railway Company may procure and keep in full force and effect during the life of this contract, for its protection, insurance in the amounts hereinabove provided covering the Contractor's obligations to the Railway Company hereunder as set forth in Paragraph 5 of this contract.

All insurance shall be without recourse against the Contractor, except as to losses caused by the dishonesty of the Contractor or his employees.

The Contractor agrees to assume the expense of such insurance to the extent of one and six-tenths per cent (1.6%) of the compensation earned under this contract, and the Railway Company is hereby authorized to deduct such

amounts in remitting to the Contractor the monthly payments herein provided for. If for any reason the Railway Company is unable to procure such insurance or continue the same in force, it shall have the right to cancel and terminate this contract upon ten (10) days' written notice.

8. In the event that highways between the various stations become impassable, the Contractor shall immediately notify the Railway Company of that fact so that it may have as much time as possible within which to arrange and substitute other service if it so desires between said stations. The Contractor agrees to resume operation of said motor vehicles immediately upon said highways again becoming passable and he agrees to notify the Railway Company in advance of the time when said motor vehicle service will be resumed so as to enable the Railway Company to make arrangements for the discontinuance of such other service with the least inconvenience and expense.

9. This agreement may be terminated by either party giving the other thirty (30) days' written notice of termination.

In Witness Whereof the parties hereto have caused this [fols. 39-40] agreement to be executed the day and year first above written.

Chicago and North Western Railway Company, By
(Signed) Fred W. Sargent, President.

Attest: (Signed) John D. Caldwell, Secretary.

F. Landon Cartage Company, By (Signed) F. Landon, President.

Attest: (Signed) Lee S. Landon, Secretary.

[fol. 41] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed January 22, 1943

The Interstate Commerce Commission, hereinafter called the Commission, one of the defendants in the above-entitled action, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of

exception to the many errors and insufficiencies in the plaintiff's complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

The Commission admits the allegations in paragraphs I, II, and III of the complaint, upon information and belief.

II

In answer to the allegations in paragraph IV of the complaint the Commission admits that the court has jurisdiction of the action herein and of parties thereto. The Commission further admits the alleged procedure before the Commission upon an application of plaintiff for a certificate under the "grandfather" provisions of Section 206(a) of the Motor Carrier Act of 1935, but denies that a [fol. 42] certificate to continue operations previously instituted, as alleged, was denied, and alleges that the effective date of the order of November 26, 1941, has been extended to January 31, 1943, since the filing of this action.

III

Answering the remaining allegations of the complaint the Commission alleges that proceedings involved in this action were instituted upon the filing by the plaintiff of an application with the Commission on February 11, 1936, seeking authority as a common carrier of freight, passengers, baggage, and mail, between certain named points, as shown in application, over designated routes, as then conducted by and through named owner-operators, referred to as contractors, and under the "grandfather" provisions of Section 206 (a) of the Motor Carrier Act of 1935, which said application was given Commission Docket No. M. C. 42614; a second application was filed by plaintiff on February 12, 1936, seeking a similar authority to conduct operations commenced between June 1 and October 15, 1935, between certain named railway stations in Illinois, Iowa, and Wisconsin, over designated routes; and under the provisions of Section 207 (a) of the Motor Carrier Act of 1935, which said application was given Commission Docket No. M. C. 42614 (Sub No. 1); a third application was filed by plaintiff on August 2, 1937, seeking similar authority to en-

gage in operations between certain railway stations in Wisconsin over designated routes, as shown in the application, and under the provisions of 207 (a) of the Motor Carrier Act of 1935, which said application was given Commission Docket No. M. C. 42614 (Sub No. 3); a fourth application was filed by plaintiff on October 25, 1937, seeking similar authority to engage in the transportation of general commodities consisting entirely of express and newspapers, [fol. 43] between De Kalb and Sycamore, Ill., over a designated route, as shown in the application, and under provisions of Section 207 (a) of the Motor Carrier Act of 1935, which said application was given Commission Docket No. M. C. 42614 (Sub No. 4). Thereafter hearings before a Commission examiner were held on March 28, 1938, and a recommended report and order, service of which was had upon the plaintiff and other interested parties, was submitted to the Commission. Thereafter on November 26, 1941, the Commission by and through Division 5 entered its report herein sought to be reviewed, (Exhibit A to answer) wherein the application under M. C. 42614 was denied. Thereafter plaintiff's petition for reconsideration and rehearing of the order of November 26, 1941, by Division 5, wherein application under M. C. 42614 was denied, was at a general session of the Commission on November 2, 1942, denied effective as of January 1, 1943, the effective date thereof being thereafter extended to January 31, 1943.

The Commission alleges that in said proceedings the parties thereto, including plaintiff herein, were and each of them was, accorded the full hearing provided for in and by the Interstate Commerce Act; that in said hearings a large volume of testimony and other evidence bearing upon matters covered in and by the reports and orders of the Commission, hereinabove referred to and identified, were submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of plaintiff herein by its counsel; that in said hearings and subsequently, in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination, on behalf of said plaintiff by its counsel, including many of the questions raised by the plaintiff in this action.

[fol. 44] The Commission further alleges that the findings and conclusions in said reports and orders were and are, and that each of them was and is, fully supported and

justified by the evidence submitted in said proceedings as aforesaid, and that in making said reports and orders it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings by their respective counsel.

The Commission further alleges that said reports and orders were not made or entered either arbitrarily or unjustly, or without proof or contrary to the relevant evidence or without evidence to support them; that in making said reports and orders the Commission did not exceed the authority conferred upon it by law, and the Commission denies each of and all of the allegations to the contrary contained in the complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the complaint, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said reports and orders.

IV

Specifically answering the allegations in paragraph XI of the complaint, the Commission denies that the plaintiff will suffer damage by reason of the Commission's report and order, as alleged.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall [fols. 45-57] direct, and hereby prays that said complaint be dismissed.

Interstate Commerce Commission. By Allen Crenshaw, Attorney.

Daniel W. Knowlton, Chief Counsel, of Counsel.

Duly sworn to by Wm. E. Lee. Jurat omitted in printing.

[fol. 58] IN THE DISTRICT COURT OF THE UNITED STATES

{Title Omitted}

ANSWER OF THE UNITED STATES OF AMERICA—Filed January 20, 1943

The United States of America, one of the defendants in the above entitled action, for answer to the complaint or so

much or such parts thereof as it is advised that it is material for it to answer, says:

1. This defendant admits the allegations of Paragraph 1 of the complaint except conclusions of law.

2. This defendant admits the allegations of Paragraphs 2, 3, and 4 of the complaint.

3. This defendant does not deny the allegations of fact contained in Paragraph 5 of the complaint; but is advised that it is not required to admit or deny the conclusions of law and matters of opinion therein contained, including the extracts from portions of documents which speak for themselves. This defendant specifically denies that plaintiff or his predecessors in interest commenced or at any time performed transportation of freight by motor vehicle as a common carrier; and alleges that all freight transported by motor vehicle for plaintiff and his predecessors in interest was transported by other persons, pursuant to contracts between them and plaintiff and his predecessors in interest, all of which more particularly appears in the detailed allegations of Paragraph 5 of the complaint, and from the [fol. 59] terms of the said contracts, a copy of one of which contracts forms Exhibit No. 3 of the complaint, and from the findings of the Interstate Commerce Commission; which contracts, findings, reports, orders and records of the Interstate Commerce Commission are referred to and relied upon for a more particular statement of the matters and relationships between the parties which are set forth in Paragraph 5 of the complaint.

4. This defendant is advised that it is not required to admit or deny the allegations of Paragraph 6 of the complaint, as they are conclusions of law.

5. This defendant admits the allegations of Paragraph 7 of the complaint, subject to the qualifications set forth in Paragraph 3 hereinabove.

6. This defendant admits the allegations of Paragraph 8 of the complaint, except the conclusions of law and opinions therein contained; and specifically denies that the Interstate Commerce Commission's decision was based upon an arbitrary theory or was unsubstantiated by evidence of record.

7. This defendant does not acquiesce in the conclusions of law set forth in the allegations of Paragraph 9 of the complaint, and specifically denies that the report and order of the Interstate Commerce Commission are erroneous, unreasonable, arbitrary, contrary to law, contrary to the evidence, in excess of the Commission's powers and authority, or in conflict with the standards prescribed by the Congress.

8. This defendant does not acquiesce in the conclusions of law set forth in the allegations of Paragraph 10 of the complaint; and specifically denies that the report and order of the Interstate Commerce Commission are in any respect unreasonable, unlawful, unsupported by or contrary to the evidence, and specifically denies that in any respect the Commission misconstrued the law or the record or exceeded its powers and authority.

[fol. 60] 9. This defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in the allegations contained in Paragraph 11 of the complaint; but is advised that due to postponement of the effective date of the Commission's order plaintiff is not pressing his application for interlocutory relief.

All of which matters and things this defendant is ready to aver, maintain and prove as this Honorable Court shall direct.

Wherefore this defendant prays that the relief prayed for by plaintiff be denied and that the plaintiff's complaint be dismissed and that the defendants recover their taxable costs.

Edward Dumbauld, Special Assistant to the Attorney General, Thurman Arnold, Assistant Attorney General, Robert L. Pierce, Special Assistant to the Attorney General, J. Albert Woll, United States Attorney.

[fols. 61-62] I hereby certify that copies of the foregoing answer were this day mailed to the following persons:

Nye F. Morehouse, Esquire, 400 West Madison Street,
Chicago, Illinois. Allen Crenshaw, Esquire, Interstate
Commerce Commission, Washington, D. C.

Edward Dumbauld, Special Assistant to the Attorney
General, Department of Justice, Washington, D. C.

January 6, 1943.

[fol. 63] IN DISTRICT COURT OF THE UNITED STATES

[Title Omitted]

ORDER SETTING HEARING ON MOTION FOR INTERLOCUTORY
INJUNCTION

This matter coming before the court this 21st day of January, 1943, upon presentation of the verified complaint heretofore filed herein and upon plaintiff's motion for an interlocutory injunction, and it appearing to the court therefrom that the case stated in the complaint brings it within the provisions of Section 266 of the Judicial Code;

It Is Hereby Ordered that said motion and plaintiff's application for an interlocutory injunction as prayed for in the verified complaint herein be, and it hereby is, set for hearing on the 28th day of January, 1943, at 10:30 o'clock A. M., in Room 603, United States Court House, at Clark and Adams Streets in the City of Chicago, Illinois, before a court specially constituted pursuant to Section 266 of the Judicial Code, consisting of the undersigned and such other [fols. 64-65] two judges as may be called to his assistance to hear and determine said motion and application.

It Is Further Ordered that a copy of this order be duly served upon each of the defendants at least five days prior to the hearing.

Enter: Philip L. Sullivan, District Judge.

Entered January 21st, 1943.

[fol. 66] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION AT
CHICAGO

No. 4955

CHARLES M. THOMSON, as Trustee of the property of CHI-
CAGO NORTHWESTERN RAILWAY COMPANY, a corporation,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COM-
MISSION.

Statement of Evidence—Filed April 19, 1943

Transcript of the proceedings had in the above entitled cause before the Honorable J. Earl Major, Judge of the United States Circuit Court of Appeals, the Honorable Phillip L. Sullivan and William H. Holly, Judges in the above entitled court, on January 28, A. D. 1943, at the hour of 10:30 o'clock A. M., in Room 605, United States Court House, Chicago, Illinois.

Present: Hon. Nye F. Morehouse, Representing the plaintiff, Charles M. Thomson, as Trustee of the property of Chicago Northwestern Railway Company, Hon. Allen Crenshaw, (Washington, D. C.), Representing the Interstate Commerce Commission, Hon. Edward Dumbauld, (Washington, D. C.), Special Assistant to the Attorney General, and Hon. James J. Lewis, Assistant United States Attorney, Representing the United States of America.

[fol. 67]

COLLOQUY

Mr. Lewis: If the Court please, with your leave I would like to introduce counsel who will present the government's case for the United States of America and the Interstate Commerce Commission.

This is Mr. Dumbauld from the Department of Justice, the Anti-trust Division. He is a member of the Bar of the State of Pennsylvania. He will present the case on behalf of the Attorney General.

Colonel Allen Crenshaw is appearing on behalf of the Interstate Commerce Commission.

Mr. Morehouse: I presume that the Court has seen too much of me on these cases so I will not have to introduce myself.

Judge Major: What is the status of this hearing? Can it be heard as an application for the filing of an Information on the merits?

Mr. Morehouse: I think so, your Honor. It comes up today on our motion for an interlocutory injunction and I hand up this motion at this time.

I understand that counsel for the defendants are willing to stipulate, as I am, that this case may be submitted today to the court and taken as a final hearing as well as on the [fol. 68] motion for an interlocutory injunction.

Judge Major: All right. Do you gentlemen agree to that?

Mr. Crenshaw: Yes, we will undertake to have the order extended to permit the decision of the court to go into effect and I think that would obviate the interlocutory injunction.

Judge Major: Is there any testimony to be offered?

Mr. Morehouse: I have one witness that I would like to present and ask about five or six questions to prove up the allegations of the Tenth Section of our complaint.

Mr. Crenshaw: That is in reference to the damage involved, Mr. Morehouse?

Mr. Morehouse: Yes.

Mr. Crenshaw: We would, of course, admit that if he had to discontinue operations as he claims that there are damages involved, considerable damages perhaps.

Judge Major: Would that perhaps obviate the necessity of having the witness testify?

Mr. Morehouse: Perhaps I could state what the witness would testify to.

The witness would be George W. Hand, Assistant to the President, who was one of the witnesses before the Commission and whose testimony will be introduced here as a [fol. 69] part of the record before the Commission.

I propose to show by him that these motor carrier operations of the Chicago Northwestern Trust Estate have been carried on subsequent to the time shown in the record before the Commission and are still being carried on; that the volume of freight handled thereby has increased to a point where it is approximately one hundred and fifty million pounds annually as alleged in the complaint and that the gross revenue derived from that business is about six hundred thousand dollars per year.

The plaintiff desires to continue those operations for all of the reasons shown below before the Commission and if required to discontinue them at this time he would lose a very large part, if not all of that business, because it comes through to the railroad because of the particular type and flexibility and greater speed and economy of handling it between rail stations through the motor trucks.

If the plaintiff were required to discontinue this of course the trust estate would lose the benefit of these contracts, which it has with the truckers, and they would be abrogated and particularly under present conditions the trustee would [fol. 70] be unable to handle that freight in any other way because it would mean additional equipment and with the present war emergency and the strain due to the large volume of traffic he would not be able to obtain that equipment.

Now, that is what I would expect to prove.

Judge Major: Are you willing to stipulate that if the witness were called that he would so testify?

Mr. Crenshaw: I have no basis to admit that a certain amount of poundage was transported over this railroad and as to the dollars and cents I do not believe that is necessary. I can admit that up to the time of the Commission hearings these operations were continued and I so assume that they are continued to the present time. For the purpose of the record I will admit that they are continued up to the present time.

Judge Major: If the witness was called he would so state, you will admit that?

Mr. Crenshaw: Yes. The purpose of an interlocutory injunction would be to obviate the order going into effect, to avoid that, on the theory that the order would stop the operation. And since we have agreed to have the order extended until the Court decides it, I do not see any need for that evidence to go in.

[fol. 71] Judge Major: You do not need to admit that it is material but you will admit, as I understand it, that if the witness was called he would so testify?

Mr. Crenshaw: Yes, I will admit that.

Judge Major: That is enough.

Mr. Crenshaw: I am just trying to avoid the taking of testimony in the case.

Judge Sullivan: It is unnecessary to put the witness on the stand then.

Mr. Crenshaw: One of the theories of the defense in this case is that if the orders go into effect he could still continue operations just as he has all these years.

Mr. Dumbauld: I would like to ask if the witness would also testify on this point on the diversion or losing of this traffic, whether there would be no traffic or whether it would be lost to the other motor carriers; do you offer to have him testify to that?

Mr. Morehouse: That would be something for you to bring out on cross examination if the witness were put on the stand.

Mr. Dumbauld: We will admit that.

[fol. 72] Judge Major: What is that?

Mr. Dumbauld: We will admit that the witness would testify to everything that was stated. I do not think that it is important.

Judge Major: All right.

Mr. Morehouse: I just tender that proof to the court then.

Judge Major: It is in the record that the witness would so testify.

Judge Sullivan: I have a case here that is on trial and I want to save time so just wanted to know when to have them come back. How long do you gentlemen think you want to discuss this matter?

Mr. Morehouse: Well, if the court wants to hear a complete argument—of course the trial will not take long as we will just put in the records and one or two documentary exhibits, such as the reports to Congress showing the meaning of this Act. I think that the time consumed would be about an hour and a half to cover the thing completely for the plaintiff, although I will try to do it in an hour.

Mr. Crenshaw: The way we regard it is that it is a rather short, limited issue and I would expect to take very few [fol. 73] minutes to cover our side of it. I expected to have a brief prepared this morning but I did not quite finish it.

Mr. Morehouse: I have one also.

Judge Major: Have you any briefs ready?

Mr. Morehouse: I have a brief that I put a little extra steam on and got it finished.

Judge Major: What about the reports to Congress, you do not have to put those in the record. Doesn't the court take judicial notice of things like that?

Mr. Morehouse: I think that is correct and I have copies of those here and I thought maybe it would be convenient as I have four copies of each exhibit.

Judge Major: After you get your record made how long do you want to discuss it?

Mr. Morehouse: Not over an hour and a half.

Judge Major: To talk? That is a long time to talk, an hour and a half.

Mr. Morehouse: I am allowing time there to make my argument and then reserving some time to reply to what may be said on the other side.

Judge Sullivan: He said that he will only take a few [fol. 74] minutes. You will take most of the time on the opening statement?

Mr. Morehouse: Yes. I will have to tell you what the case is about, which will take more time than the defendants' will take if I do it right.

Judge Major: The court thinks that you ought to be able to do that in forty-five minutes after you get your record made.

Mr. Morehouse: I will be very happy to try to do it in that time.

Judge Major: Are you ready?

Mr. Morehouse: Yes.

Judge Major: These exhibits you want to put in; did you talk to opposing counsel with reference to those?

Mr. Morehouse: Yes, I have.

Judge Major: Do they know what you propose to offer?

Mr. Morehouse: They know insofar as the Congressional Records are concerned.

Judge Major: I just wondered if there was any objection to them, if you could agree on those.

Mr. Crenshaw: I suggested to Mr. Morehouse that if he would introduce the record here, I have not checked it and the thing is that I am interested in having the complete [fol. 75] record before the Commission in evidence. I do not think that it is necessary to go any further. I suggested that if he offered it it should be offered with the agreement that if there are any others that are in here he could have them later certified and he could then have them before the court.

Mr. Morehouse: I am willing to have them in on that basis.

Mr. Crenshaw: I think he has here what is pertinent to this particular case.

Mr. Morehouse: I have attempted to have the whole record certified and as you will see that is not a large record.

Mr. Crenshaw: That is only a part of the record. It is then agreed that the whole record will be produced if that is necessary.

Mr. Morehouse: If there is anything else of record before the Commission that is not here introduced and counsel requests that it be introduced, or if the court so requests, I will obtain it and furnish it later.

Judge Major: With that understanding have you anything further to offer?

Mr. Morehouse: Yes.

[fol. 76]

OFFERS IN EVIDENCE

I offer as Plaintiff's Exhibit No. 1, a copy of the transcript of the testimony before the Commission, it being duly certified by the Commission.

Judge Sullivan: Are you offering it now?

Mr. Morehouse: I will offer them all later.

Together with that I offer these duly certified copies of the six exhibits, which were introduced before the Commission, and I ask that those be marked, with the Commission's certificate, as Plaintiff's Exhibit No. 1-A.

(Document so marked as requested.)

Mr. Morehouse: As Plaintiff's Exhibit No. 2, I will ask to have this certified copy of the Commission's order of February 24th, 1938, setting this proceeding for hearing before the Commission below, marked.

(Document so marked as requested.)

Mr. Crenshaw: I think it is pertinent here to state that I notice that he has not included the original application with all the petitions attached to it. There are a number, as I recall it.

Mr. Morehouse: I did not have a copy of the application and the record or the transcript showed that it was not made strictly a part of the record in the case.

[fol. 77] Judge Major: Have you any objection?

Mr. Morehouse: I have no objection to it except it will take me some time to assemble some fifteen or sixteen contracts.

Mr. Crenshaw: I am not so interested that he has it here today but I am merely suggesting that it is a pertinent part of the case and I would like to make reference to some part of that. It is a pertinent part of the record.

Judge Major: Have you anything else?

Mr. Morehouse: On that point will it be satisfactory if I furnish a copy of the application without all of the contracts; in view of the fact that in the transcript below and at the hearing below it was agreed that Exhibit No. 6, being a copy of one of the contracts, was a fair and accurate sample of all the contracts.

Judge Major: That is merged in your bill?

Mr. Morehouse: There is a copy of one attached to the bill.

Mr. Crenshaw: I am a little confused as to which copy of the contract is attached to the bill.

Mr. Morehouse: Well, it appears that the one attached to the bill is not the same contract as the one that was introduced below so you will have copies of two contracts in the record.

Judge Sullivan: They are all alike?

Mr. Morehouse: They are substantially alike; there is a slight difference.

Mr. Crenshaw: I want to be sure of the thing because I think the contract between the railroad and the motor carrier is the crux of the situation.

Mr. Dumbauld: They ought to be before the court if there is any question about it.

Mr. Morehouse: They are a part of the complaint in this case. The other one is Exhibit No. 6. My point is do you want me to bring in all sixteen of them as it will be some trouble?

Judge Major: As I understand it, opposing counsel will furnish those. You are the one proposing them to be admitted?

Mr. Crenshaw: No, our position is not quite that. Our position is that unless the plaintiff offers the entire record the court would be limited to review on the basis of fact in the Commission's order and could not consider the facts in the record. I think that is so well recognized that it is

needless to cite any authorities. At the same time we are [fol. 79] trying to avoid any undue burden on the plaintiff or to clutter up the record of the court by simply agreeing that he would produce those records that we consider pertinent to this trial. I do consider pertinent the contracts in this case. It is an important part of the evidence in this case.

Judge Major: All of the contracts?

Mr. Crenshaw: I will say that they are substantially the same and if he gets one or two of those first contracts that would be satisfactory. Those contracts changed somewhat in their terms and there is one that I am very much interested in getting before this court.

Mr. Morehouse: I can show him those without taking up the time of the court and show him that all he needs are the two that are in evidence. So if he will allow me to introduce only the application that was made below then if he insists on having all the contracts I will get them.

Mr. Crenshaw: I just want enough of them in the record to satisfy myself that they are the one pertinent to the issues here.

Judge Holly: I think that you gentlemen can agree on that after the argument is over.

[fol. 80] Mr. Crenshaw: I think we can.

Mr. Dumbauld: The government prepared on the basis of the complaint and we thought all the contracts were identical but if there is any difference why then we would want a chance to have all the contracts in.

Judge Major: With reference to that then if counsel for the Department of Justice and for the Commission insist on it the other side will produce these contracts, is that right?

Mr. Morehouse: That is right. We will produce the application or the contracts if they insist on it.

Judge Major: That ends that subject.

Mr. Morehouse: I would like to have this identified as Plaintiff's Exhibit No. 3, a copy of Senator Wheeler's report on behalf of the Committee on Interstate Commerce to the Seventy-fourth Congress.

Judge Major: Why do you want to put that in the record?

Mr. Morehouse: Well, it presents them the bill.

Judge Major: It does not have to be in the record for the court to notice it.

Mr. Morehouse: I do not think so.

[fol. 81] Mr. Crenshaw: I will agree that the court can take judicial notice of it.

Judge Sullivan: It is a matter of argument anyway.

Mr. Morehouse: I would like to have it in the record unless the court wishes to take judicial notice of it.

The same will doubtless hold true as to the Congressional Record, that part in which Senator Wheeler explained this bill before the Senate. That part that I have particular reference to appears on page 5878 of volume 79 of the Congressional Record for April 15, 1935.

Mr. Crenshaw: We object to that as evidence but I think the court can take judicial notice of it.

Judge Major: The court will take judicial notice of it, there is no doubt about that.

Have you anything else?

Mr. Morehouse: There is one other thing that I would like to have the court take judicial notice of and that is the report by Mr. Sadowski to the House with respect to this same bill.

Judge Major: The Chairman of the Committee?

Mr. Morehouse: He was representing the Committee on [fols. 82-85] Interstate and Foreign Commerce.

Judge Major: The report of the Committee?

Mr. Morehouse: The report on behalf of the Committee to the House.

Judge Major: All right.

Mr. Morehouse: Particular portions of that will be brought to the attention of the court.

Judge Major: Is there anything further?

Mr. Morehouse: These Plaintiff's Exhibits Nos. 1, 1-A and 2 are offered in evidence.

Judge Major: All right.

(Thereupon the said documents so offered in evidence as Plaintiff's Exhibits Nos. 1, 1-A and 2, were received in evidence and so marked as of this date.)

Judge Major: Anything further?

Mr. Morehouse: That is all the evidence I wish to introduce.

Judge Major: All right, proceed with the argument at this time.

Mr. Crenshaw: That is all of the evidence?

Mr. Morehouse: Yes.

(Which was all the evidence offered or received on the trial of said cause.)

Approved: Allen Crenshaw, Atty. Interstate Commerce Commission. Edward Dumbauld, Special assistant to Attorney General. Nye F. Morehouse, P. F. Gault, for Plaintiff.

[fol. 86]

PLAINTIFF'S EXHIBIT No. 1

Before the Interstate Commerce Commission

Docket No. MC-42614

Form BMC A-1

In the Matter of THE APPLICATION, as Amended, of CHARLES P. MEGAN, Trustee of the Chicago and North Western Railway Company, of 400 West Madison Street, Chicago, Illinois, for a Certificate of Public Convenience and Necessity (Form BMC A-1). Authorizing Operation as a Common Carrier by Motor Vehicle in the Transportation of Commodities Generally, in Interstate Commerce, in the States of Illinois, Iowa, Michigan, South Dakota, Wisconsin, and Nebraska, Over the Routes and Between the Points More Fully Described in the Application

Chicago, Illinois,

March 28, 1938,

11:15 o'clock a. m.

Before A. E. Later, Examiner, Interstate Commerce Commission Met Pursuant to Notice

APPEARANCES:

P. F. Gault, Weldon A. Dayton and S. E. Gregory, 400 West Madison Street, Chicago, Illinois, appearing for applicant.

Earl N. Cannon, 708 First Central Building, Madison, Wisconsin, appearing for Leicht Transfer & Storage Company, Green Bay, Wisconsin, et al.

Earl Girard, Transportation Building, Chicago, Illinois, appearing for Chicago-Milwaukee Motor Carriers, Inc.

[fol. 87] David Axelrod, 10 South La Salle Street, Chicago, Illinois, appearing for H. J. Tobler Transfer, Inc., et al.

Walter McFarland and James A. Gillen, 547 West Jackson Boulevard, Chicago, Illinois, appearing for the Chicago, Burlington & Quincy Railroad Company.

Floyd F. Shields and Kenneth W. Munsert, 2106 Field Building, Chicago, Illinois, appearing for Keeshin Motor Express Company, Inc., et al.

Harry M. Slater, 616 South Michigan Avenue, Chicago, Illinois, appearing for Central States Motor Freight Bureau, Inc.

[fol. 88]

Index to Witnesses

	Direct	Cross	Redirect	Recross
George W. Hand	9	21		
S. E. Gregory	24	53		
W. W. Starr	63	83	109	
Fred L. Leicht	123	140		

Index to Exhibits

For Identification in Evidence

Exhibit No. 1, Witness Hand	12	14
Exhibit No. 2, Witness Hand	12	14
Exhibit No. 3, Witness Hand	12	14
Exhibit No. 4, Witness Gregory	27	43
Exhibit No. 5, Witness Gregory	48	122
Exhibit No. 6, Witness Starr	69	72

[fol. 89]

Proceedings

Exam. Later: Come to order, please, gentlemen.

The Interstate Commerce Commission has set for hearing at this time and place Docket No. MC-42614, which is the application of Charles P. Megan, Trustee of the Chicago and North Western Railway Company of Chicago.

This is an application for a certificate of public convenience and necessity under the grandfather clause of Section 206-A of the Motor Carrier Act, and asks to authorize operations as a common carrier in the transportation of commodities generally in interstate commerce in the States

of Illinois, Iowa, Michigan, South Dakota, Wisconsin and Nebraska. The routes are described in the application.

Who appears for applicant?

Mr. Gault: Weldon A. Dayton, S. E. Gregory and P. F. Gault, 400 West Madison Street, Chicago, Illinois, appearing for applicant.

Exam. Later: Who appears in support of the application?

(No response.)

Exam. Later: Who appears for protestants?

Mr. Axelrod: David Axelrod, 10 South La Salle Street, Chicago, Illinois. I appear for H. J. Tobler Transfer, Inc.; Corëy & Evans, Inc.; and Dohrn Transfer Company.

I should like to also enter the appearance of the Chicago-Milwaukee Motor Carriers, Inc., by Earl Girard.

[fol. 90] Mr. Cannon: Earl N. Cannon, 708 First Central Building, Madison, Wisconsin, appearing for Leicht Transfer & Storage Company, Green Bay, Wisconsin; Northern Transportation Company, Green Bay, Wisconsin; Terminal Truck Lines, Green Bay, Wisconsin; Olson Transportation Company, Green Bay, Wisconsin; Knox Motor Service, Cherry Valley, Illinois.

Exam. Later: You gentlemen are all admitted to practice, I judge?

Mr. Axelrod: Yes.

Exam. Later: Are there any further appearances?

Mr. Shields: Kenneth W. Munsert and Floyd F. Shields, 2106 Field Building, Chicago, Illinois, appearing for Keeslin Motor Express Company, Inc.; Bernd Trux, Incorporated; and Dickens Motor Freight, Inc.

Exam. Later: Are there any further appearances?

Mr. Gillen: Walter McFarland and J. A. Gillen, 547 West Jackson Boulevard, Chicago, Illinois, appearing for the Chicago, Burlington & Quincy Railroad as intervener, as its interests may appear.

I should like leave at this time to file an intervening petition on behalf of that carrier.

Exam. Later: It will be received.

(Intervening petition filed.)

Exam. Later: Are there any further appearances?

Mr. Cannon: I would also like to ask leave to file an

[fol. 91] intervening petition.

Exam. Later: Mr. Axelrod, have you filed a petition?

Mr. Axelrod: Yes, I have.

Exam. Later: The petitions of the various counsel will be received and filed.

(Intervening petitions filed.)

Exam. Later: Are there any further appearances to be entered?

(No response.)

Exam. Later: Are you ready to proceed, Mr. Gault?

Mr. Gault: Yes. If the Examiner please, I take it that the Commission will take judicial notice of the fact that Charles P. Megan is the Trustee of the Chicago & North Western Railway Company pursuant to a proceeding which is now pending in the United States District Court, Northern District of Illinois, Eastern Division, and also in Finance Docket 1088, the Chicago & North Western Railway Company reorganization, before the Interstate Commerce Commission.

Exam. Later: Yes.

Mr. Gault: At this time, if the Examiner please, I would like to amend the application to eliminate Route No. 16, which is shown in the Commission's notice and order. That is between Red Granite and Neshkoro, Wisconsin.

We do not propose to continue that operation.

Exam. Later: Very well.

[fol. 92] Mr. Gault: Before I put on my first witness, I desire to make the reservation on the record that we consider this purely a matter of private carriage between freight stations of the Chicago & North Western Railway Company, and not properly within the scope of the Motor Carrier Act.

However, we are prosecuting this application for two reasons. One reason is that the status and scope of the Act is uncertain and the penalties provided in the Act are too severe to permit taking any chances on that matter.

Second, it is our desire to be cooperative in the application and administration of the Act.

Exam. Later: Mr. Gault.

Mr. Gault: Yes?

Exam. Later: It is your intention to use these services that you have here made application for in transporting

freight which is accepted at your railroad stations and is transported for hire, is that correct?

Mr. Gault: Transported for hire under rail tariffs, yes, sir.

Exam. Later: But it is transported for hire, regardless of the tariffs?

Mr. Gault: Well, I cannot say regardless of the tariffs; it is transporting for hire, yes.

Exam. Later: All right.

Mr. Gault: So that all may understand it here, the operation [fol. 93] ations which are covered by this application are between existing railroad stations where less than carload freight is handled, and has been handled for a great many years.

In other words, instead of the movement between these railroad stations being actually over the rails, it will be over the highway. So far as the shipping public is concerned, they will pay the rates which are named in the rail tariffs.

Exam. Later: Very well. You may call your first witness.

Mr. Gault: I will call Mr. Hand.

Exam. Later: Be sworn, please.

(Witness sworn.)

Mr. Cannon: Pardon me, Mr. Examiner.

Exam. Later: Yes.

Mr. Cannon: I would like to clear something up. You say the public will pay. When you use the term "will", what period are you referring to?

Mr. Gault: Will, do and have been; there is no change in the matter of tariff application.

Mr. Cannon: You are not stating for the future—

Mr. Gault: For the future.

Mr. Cannon: —what they will pay, are you, or is that the intention of your statement, that they always will pay the same charges regardless of the service?

Mr. Gault: Under this authority, yes.

[fol. 94] Mr. Axelrod: This grandfather application.

Mr. Gault: Yes; this grandfather application.

Mr. Axelrod: It does not make any difference.

Mr. Gault: That is the only way we have been operating.

Exam. Later: I do not think that question as to the rates

you are going to charge is necessarily competent in a grandfather proceeding, except as it might show that you have been conducting this in a manner that was prohibited by the Act.

Other than that, I do not think rates have anything to do with it. You may proceed, Mr. Gault.

Mr. Gault: Take the stand, please, Mr. Hand.

GEORGE W. HAND was sworn and testified as follows:

Direct examination.

By Mr. Gault:

Q. State your full name for the record, please, Mr. Hand?

A. George W. Hand.

Q. Please state your connection with the Chicago & North Western Railway Company?

A. I am assistant to the president.

Q. Will you please state your experience with respect to transportation matters?

A. I have been in the service of the Chicago & North Western Railway for 35 years and in various departments. I was in the engineering department for a long time. I [fol. 95] was valuation engineer for a good many years, from the time of the passage of the Federal Valuation Act until the work was completed, that is, when the final valuation of the Commission was issued.

Since 1920 I have been assistant to the president and in that office have jurisdiction over operating, financing, construction, maintenance and traffic to some extent, although I never have anything to do with tariffs.

In about 1925 I began investigating and studying the question of utilization of motor service, and the effect of motor service on the railroad company's business, and have made various reports on that subject.

Our company participated in the organization of the Interstate Transit Lines which is a passenger carrying operation. I am vice president and a director of, and I have supervision over the operation of the Wilson Transportation Company which is a motor freight operation owned by the Chicago, St. Paul, Minneapolis & Omaha Railway, a subsidiary of the Chicago & North Western Railway.

Q. Mr. Hand, in your position, you are very familiar with the operations of the Chicago & North Western Railway Company, are you not, over the system?

A. Yes, sir.

Q. And its general methods of doing business?

A. Yes.

[fol. 96] Q. And its facilities?

A. Yes, sir.

Q. Also, your experience with the railroad company has made you familiar with the operations of the company historically, has it not?

A. Yes, sir. As a part of the valuation work it was necessary to develop a complete history of the operations from the very beginning, the granting of charters, financing, and all of that.

That was done under my supervision.

Exam. Later: Mr. Witness—

The Witness: Yes.

Exam. Later: — speak up, please. I am having some difficulty in hearing you up here.

The Witness: I beg your pardon. I say, that was done under my supervision, and I think I am very well acquainted with it throughout.

Mr. Gault: If the Examiner please, I would like to distribute these three exhibits before we start identifying them.

Exam. Later: Very well. Off the record.

(Discussion outside the record.)

Exam. Later: Back on the record.

Mr. Gault: If the Examiner please, I now ask that these three exhibits be identified as Applicant's Exhibits 1, 2 and [fol. 97] Exam. Later: They may be so identified.

(Applicant's Exhibits 1, 2 and 3, Witness Hand, identified)

Q. (By Mr. Gault) Mr. Hand, I now hand you what has been identified as Applicant's Exhibit No. 1.

A. Yes.

Q. This is a statement, is it not, listing the routes over which authority is sought as named in the Commission's notice?

A. Yes, sir.

Q. Route No. 16, as already stated, is desired to be withdrawn?

A. Yes. That service has been discontinued.

Q. In Exhibit No. 2, is a system map of the Chicago & North Western Railway—

A. Yes.

Q. In which the routes have been numbered correspondingly with those shown on Exhibit No. 1?

A. Yes.

Q. And delineated on the map?

A. Yes. That is correct.

Q. I now show you what has been identified as Exhibit No. 3, Mr. Hand.

A. Yes.

Q. That is a highway map, is it not, in which these routes have been marked out on the highways on that map?

A. Yes. Exhibit No. 3 is just a larger scale map. It shows [fol. 98] the highways.

Q. Yes.

A. Exhibit No. 2, the smaller one, shows the railroad, so the two together shows the relation of these routes to the railroad, and also to the highways.

Q. Now, that map has a legend, has it not?

A. Yes.

Q. That is at the left hand margin, is it not?

A. The one I have here is.

Q. Yes.

A. It shows that the lines of the Chicago & North Western Railway have been drawn on it in green, a solid green line. The Lines of the Chicago, St. Paul, Minneapolis & Omaha have been drawn in a broken green, dashed line.

Exam. Later: What was the name of that road?

The Witness: Chicago, St. Paul, Minneapolis & Omaha.

Exam. Later: Oh.

The Witness: That is a wholly owned subsidiary of the Chicago & North Western Railway. The Chicago & North Western Railway has approximately 8,400 miles of road. The Chicago, St. Paul, Minneapolis & Omaha Railway has approximately 1,600 miles of road.

Mr. Gault: If the Examiner please, I now offer in evidence Applicant's Exhibits Nos. 1, 2 and 3.

Exam. Later: Is there any objection?

[fol. 99] (No response.)

Exam. Later: They may be admitted.

(Applicant's Exhibits 1, 2 and 3, Witness Hand, received in evidence.)

By Mr. Gault:

Q. Now, Mr. Hand, I wish you would state for the record, going down through these routes—strike that, please.

The Chicago & North Western Railway Company has been in general freight transportation business in this territory for a great many years, has it not?

A. Yes, sir.

Q. Will you please state, going down the routes as listed on Applicant's Exhibit No. 1, about the approximate date when our line was constructed and open for business?

A. As to Route No. 1, between St. Charles and Geneva, the North Western was constructed through Geneva in 1854, and a branch from Geneva to St. Charles was constructed and opened up and put in operation in 1871.

Route No. 2, between Rochelle and Crestoh, Illinois. The railroad was built through and begun to be operated through these towns in 1854.

I should say right now that it has been operated there ever since, and without repeating that, it will be understood I presume that it applies to the rest of them.

Q. Yes. Go ahead.

[fol. 100] A. Route No. 3, between Rochelle and Ashton, in 1854. Between Dixon and Franklin Grove, in 1855. Between De Kalb and Malta, in 1854.

Between Council Bluffs, Iowa, and Omaha, Nebraska, in 1867. Between Wausau and Rothschild, Wisconsin—the road was built into Wausau in 1880; Rothschild is on a short branch which was established there in 1912.

Between Hurley and Ironwood, Michigan, in 1884. Between Marinette, Wisconsin, and Menominee, Michigan, in 1872. Between Marinette, Wisconsin, and Escanaba, Michigan, in 1872. Between Sheboygan and Green Bay, Wisconsin,—the road was built into Green Bay in 1862 and into Sheboygan in 1872, and was built over the route between Manitowoc and Green Bay, thereby connecting Sheboygan, in 1906, the motor carrier application here parallels that latter described route from Manitowoc north.

Between Fond du Lac and Green Bay—it was into Fond du Lac in 1859, and reached Green Bay in 1863. Between Green Bay and Clintonville—it was into Green Bay, as I stated, in 1862, and it was built through Clintonville in 1876. Then there was a short route between Manitowoc and Green Bay constructed and put in operation in 1906,

and this (motor carrier application parallels that latter route.

Between Green Bay, Wisconsin, and Menominee, Michigan, in 1871. Between Deadwood and Lead, South Dakota, in 1902. The next one, No. 16, is out.

[fol. 101] Between Proviso and Woodstock, Illinois, in 1855. Between Proviso and Algonquin, Illinois, in 1854. Between Proviso and De Kalb, Illinois, in 1854.

Between Proviso and Belvidere, Illinois, in 1853. Between Proviso and Waukegan, Illinois, in 1855. Between Proviso and Chicago, Illinois, in 1849. Between Proviso and West Chicago, Illinois, in 1849.

Q. Now, Mr. Hand, in all of these years the Chicago & North Western Railway has maintained freight stations at these points, and the other points on the railroad for the handling of so-called merchandise freight, less than car-load freight and other descriptions of freight—

A. Yes.

Q. —has it not?

A. From the very beginning.

Q. And it has maintained a personnel and organization for that purpose, has it not, Mr. Hand?

A. Yes, sir.

Q. Now, you have made some study of the question of using motor carrier service in connection with rail service, have you not?

A. Yes.

Q. Will you state briefly the situation in which you find that advantageous?

A. The Railway Company can use motor carrier vehicles on the highways in the handling of both passenger and [fol. 102] freight traffic generally to advantage for a number of reasons.

Principally, the reasons are these: They enable it to accomplish things that make its service more flexible; that is to say, it can be more frequent and at better times of the day in some places than is possible by train service exclusively and generally it can be more economical.

That is, there can be a saving made on the railroad, for instance, sometimes that is, greater than the cost of establishing the motor service.

Recently, there has been a great decline in the amount of rail borne traffic throughout our entire territory. It has gone down to such a low level, that there are a great many

trains we formerly had in service that no longer carry sufficient traffic to pay their actual out of pocket expenses; yet, there is some traffic still needing to be moved and in such circumstances the train can be eliminated and the truck can take its place in some situations.

It is in order to improve the service and at the same time bring about a saving in expenses that the railroad can employ these operations, chiefly. They can also afford some kinds of service that way that they cannot afford at all by rail.

Q. Sometimes, is it not a fact, Mr. Hand, that it is possible by the use of a motor vehicle movement for a short distance, a relatively short distance, to maintain the same [fol. 103] service and eliminate considerable car mileage?

A. Yes. To illustrate that, if freight has to be taken out of freight cars at every station and loaded into freight cars at every station, it takes more cars than it would if it could be consolidated into one car, we will say, for several adjacent stations, and that car stopped at one place and then the freight distributed therefrom to the nearby stations.

Another thing we can do is by eliminating the number of stops any one train has to make, we can, where we use motor service, paralleling the train—if it can make faster time and go over a greater distance in twelve hours, we will say.

That means, of course, while it starts at the same place at the same time it formerly did, it goes to a destination perhaps fifty or one hundred miles further away than it could if it had peddled freight all along, and that enables us to expand the area of overnight service.

Mr. Shields: If the Examiner please, I would like to object to this line of testimony. It is not in the nature of grandfather proof, or evidence of a grandfather nature.

Mr. Gault: I freely concede that, but it is more or less informative. It is information, I think, and it has some relevancy.

Exam. Later: I am going to permit the testimony to go in. The objection will be overruled.

[fol. 104] Mr. Cannon: I object to any testimony that leads to anything else except the grandfather proof, and would like a ruling at this time so I can except to it.

Exam. Later: Read the objection, Mr. Reporter.

(The record was read.)

Exam. Later: Objection overruled.

Mr. Cannon: Exception.

Exam. Later: Off the record.

(Discussion outside the record.)

Exam. Later: Proceed.

Mr. Gault: That is all on direct. I want to point out to the gentlemen on the other side that Mr. Hand is only a witness on broad matters and is not the witness who will cover these individual matters.

Mr. Munser: May we reserve cross examination until a later time?

Exam. Later: Is that agreeable?

The Witness: I have to leave for Washington this afternoon on the Liberty. I will not be back until Thursday.

Exam. Later: Proceed with the cross examination.

Mr. Munser: I do not know that I have any now. We do not know what the other witnesses are going to say.

Mr. Gault: You could not cross examine him on other people's testimony, anyhow.

Mr. Shields: It would depend upon—may we ask counsel [fol. 105] for the applicant whether or not it is his understanding, and whether he so intends, to offer whatever testimony and evidence he may have in the nature of proof under an application for convenience and necessity?

Mr. Gault: Absolutely. We are proving convenience and necessity.

Mr. Shields: You are not willing to limit it to a hearing under the grandfather clause?

Mr. Gault: I beg your pardon. Strike out my answer. We are here to prove up the grandfather case.

Mr. Shields: You are not offering any testimony now in the nature of proof as to convenience and necessity?

Mr. Gault: I will not say that.

Mr. Shields: Then we do have cross examination.

Mr. Gault: I will not say that, for this reason: I was on the other side of a case just the other day when the matter was on brief, and counsel claimed if his grandfather rights were not valid, then the Commission should grant authority as a matter of public convenience and necessity.

I am not going to foreclose myself on the record. I will say we are here to prove up the grandfather case, but if the Commission adopts that rule, we are not waiving the benefit of it.

Exam. Later: Off the record.

(Discussion outside the record.)

[fol. 106] Exam. Later: Back on the record. You may proceed with your cross examination.

Mr. Munsert: I do not believe we have any cross examination of this witness, Mr. Examiner.

Exam. Later: Is that all?

Mr. Cannon: I have a few questions.

Cross examination.

By Mr. Cannon:

Q. Mr. Hand, have you interviewed any shippers in reference to the operations set out under these various routes?

A. No, sir.

Q. Have you made a survey of these routes personally?

A. Not personally, no, sir.

Q. Have you gone over the highways involved, by car, or any other method?

A. Some of them, but not in connection with this.

Q. How recently?

A. Well, between Chicago and Clinton, within, say, six months.

Q. How about the other routes?

A. Between Green Bay and Fond du Lac, some time within the last year.

Q. Yes.

A. I have not been over any of them since the first of this year.

Q. You made no study in reference to these highways, in connection with this particular application?

[fol. 107] A. No.

Q. Or for that purpose?

A. No, sir.

Q. Did you have anything to do with entering into—did you personally have anything to do with entering into any of the agreements under which freight is being transported on these highways by truck?

A. In a way, yes.

Q. In what way?

A. I discussed them. They are reported to me, or, to my office by the departments who make them.

The general subject has been a matter of discussion, and then the subsequent agreements—they final reach me and I execute them for the company when they get there.

Q. You did not personally interview any of these motor carriers—

A. No.

Q. —that are hauling this freight?

A. No. That is done by other people. I think they are all here.

Q. All right.

A. I do not do that personally, no, sir.

Q. I appreciate they are here. I want to be sure whether any of your testimony—

[fol. 108] A. I do not know anything about that personally.

Q. I wanted to know whether there is anything about your testimony that could be used in a convenience and necessity case as to the service rendered to the shipping public, or reasons for the necessity for this operation different than it is now being conducted?

A. I am not a lawyer. I would not know whether anything I know has anything to do with that or not.

Mr. Cannon: That is all.

Mr. Gault: That is all.

Exam. Later: Are there any further questions of the witness?

(No response.)

Exam. Later: You may be excused.

(Witness excused.)

Exam. Later: You may call your next witness, Mr. Gault.

Mr. Gault: If the Examiner please, before we call another witness, I think it might be well if the gentlemen here representing the protestants would state on the record what ones of these routes they are interested in.

I have the impression here there are certain routes they are not at all interested in, or concerned with.

Mr. Axelrod: I for one shall be very glad to do that.

Exam. Later: Can you get together—off the record.

(Discussion outside the record.)

[fol. 109] Mr. Cannon: I would like to have this discussion on the record.

Mr. Gault: I will withdraw that for the present.

Exam. Later: He has withdrawn the request. There was no occasion for this discussion of counsel in the record. I prefer that any discussion by counsel be reserved for briefs, or some such other occasion.

The discussion of counsel does not constitute facts. That is what we are interested in, in this record.

You may call your next witness, Mr. Gault.

Mr. Gault: I will call Mr. Gregory.

Exam. Later: Be sworn, please, Mr. Gregory.

S. E. Gregory was sworn and testified as follows:

Direct examination.

By Mr. Gault:

Q. State your full name for the record, Please, Mr. Gregory.

A. S. E. Gregory.

Mr. Gault: Before we proceed with Mr. Gregory's testimony, if the Examiner please, it is customary that the application be made part of the record.

I now move that it be made part of the record in this proceeding.

Exam. Later: It is not necessary to make that motion.

Mr. Gault: Then it is considered part of the record with [fol. 110] out formally making it so?

Exam. Later: It will be considered as such. However, if you make certain allegations in the record, those allegations are not necessarily considered proof except as the evidence you have supporting them is sufficient to authorize the Commission to issue you a certificate.

Mr. Shields: Is it our understanding that the applica— is being received for such information as it may contain only?

Exam. Later: What was that, Mr. Shields?

Mr. Shields: I say, is it to be understood that the application will be received for such information as it may contain?

Exam. Later: The Commission will consider it. Is there any objection?

Mr. Shields: There is no objection if it is received for what information it may contain only, and not as to proof.

Exam. Later: That is right. It will be considered for whatever information it may contain.

Mr. Shields: All right.

Exam. Later: It will be received under those conditions.

Mr. Shields: That is satisfactory.

Mr. Gault: Well, there are certain contracts that are attached to that. I assume it is not necessary for us to produce those in the record?

[fol. 111] Exam. Later: No.

Mr. Gault: I have some copies here that show the form, but not of any particular contract.

If anybody wants to examine the form, I will hand them to them right now.

Mr. Munsert: When was this application filed, Mr. Gault?

Exam. Later: It was filed—

Mr. Gault: I could not say offhand.

Exam. Later: It was filed—Form A was filed February 11th; A-1 was filed April 12, 1937.

Mr. Munsert: Thank you.

Exam. Later: Proceed with your examination of Mr. Gregory.

By Mr. Gault:

Q. What is your occupation, Mr. Gregory?

A. Commerce Agent, Chicago & North Western Railway Company, Chicago, Illinois.

Q. State briefly what your experience has been in connection with the Chicago & North Western Railway Company, Mr. Gregory.

A. I have been employed in the traffic department of the North Western Railway for the past twenty-five years, with the exception of about a year and a half, during which time I was in the army.

Q. Mr. Gregory, in the last few years you have given considerable attention to motor vehicle matters, have you not?

A. Yes, sir.

[fol. 112] Q. You have followed various proceedings of that character before state commissions and the Interstate Commerce Commission?

A. Yes, sir.

Q. As a matter of fact, at the present time, your duties are largely confined to motor vehicle operations—

A. Yes.

Q. —are they not?

A. That is correct.

Q. You have made an investigation of this application, have you not?

A. Yes.

Q. And you are in a position to state the results of that investigation?

A. Yes, sir.

Q. Have you prepared an exhibit, Mr. Gregory, which you desire to present in this case?

A. I would like to state that I have prepared an exhibit for each route. We have consolidated them all together to make one exhibit, for simplification.

Exam. Later: The next exhibit will be Exhibit No. 4.

Mr. Gault: I ask that this be identified as Applicant's Exhibit No. 4.

(Applicant's Exhibit 4, Witness Gregory, identified.)

By Mr. Gault:

Q. Mr. Gregory, this exhibit was prepared under your [fol. 113] direction—

A. Yes.

Q. —and considerable of it no doubt was prepared by you personally, was it not?

A. Yes, sir.

Q. All of it, under your direction?

A. All under my direction.

Q. Now, just state this, Mr. Gregory, what these several operations amount to and their purpose—not in detail—as an operating matter, what tariffs the shipper is charged, and in a general way at this time, just state what it is.

A. These operations consist of the substitution of motor vehicle service for rail operations which have been performed for many years.

I might say, most of them consist of branch line points, where the cost of operations has made it necessary to find some system of operation less expensive.

Therefore, we have substituted motor vehicle operation in lieu of the rail service.

Q. Now, with reference to the first one, No. 1, between St. Charles and Geneva, the railroad has been operating there for a great many years, as stated by Mr. Hand—

A. Yes.

Q. —has it not?

A. Yes.

[fol. 114] Q. They have been handling general merchandise, and so forth, between St. Charles and Geneva, not only freight which originates at those points, but which is destined to remote points of the United States?

A. Yes, sir. I believe page 1 of the exhibit explains that operation completely.

Q. Of course, in connection with the purpose, the matter of service has been a matter of influence, too, has it not?

A. Many times this type of service results in our being able to expedite the through service on the shipment.

Q. All right. Now, taking this first route, we have a freight station at St. Charles, have we not?

A. Yes.

Q. And also one at Geneva?

A. Yes, sir.

Q. Those facilities have been operating for a great many years?

A. Yes, sir. A number of years.

Q. For many years the movement was by rail from St. Charles, from the station at St. Charles to Geneva where it was delivered to the shipper?

A. Yes.

Q. In the other direction it would be received and moved by rail?

A. Yes, sir.

Q. Is that correct?

[fol. 115] A. Yes.

Q. Now, this application relates to a movement by motor vehicle between those freight stations?

A. Yes.

Q. Is that the fact?

A. That is correct. It is a substitution of motor vehicle service for the service which has been performed by rail.

Q. There is no change in rates of any kind?

A. No change whatever in the rates. Railroad rates as published in railroad tariffs are assessed in every case, in connection with all of these operations.

Q. So far as the shipper is concerned, he does not know whether it went by rail or motor vehicle, does he?

A. That is correct. In fact, if a shipment from New York to St. Charles—on a shipment leaving New York, you would not know if it was going to be handled by motor vehicle from Geneva to St. Charles, or whether it was going to be handled by rail.

Q. You mean a shipment from New York to Geneva—

A. No.

Q. —instead of St. Charles?

A. No.

Q. You said St. Charles.

A. St. Charles is right.

Q. You are right.

A. St. Charles is the branch point.

[fol. 116] Q. You are right.

A. Yes.

Q. Please go ahead in your own way and explain this exhibit No. 4.

A. As stated on page No. 1 of the exhibit, I have shown all of the detailed information as to the operation.

Now, on page 2—

Q. Just a moment. Before we go to page 2—

A. Are there any questions on page 1?

Q. Yes. Take that schedule.

A. Yes.

Q. If there is any change in that schedule, it is changed by the railroad, is it not?

A. Yes, sir. That schedule shown there is the approximate schedule. Of course, if there is any change in the main line train service it is necessary to change this schedule.

Q. Yes.

A. This schedule is coordinated with the main line service.

Q. The railroad company fixes the time of departure of the motor vehicle, does it not?

A. Yes, sir.

Q. That schedule and all similar schedules are those which are made by the railroad?

A. Yes, sir.

Q. Is that correct?

[fol. 117] A. Yes, sir.

Q. Go ahead and explain page 2.

A. On page 2 we have shown by months the number of pounds of freight which have been handled in this operation from January 1, 1935, to December 31, 1936. We started to prepare this exhibit some time in 1937, and therefore have just gone—they just went to the latter part of 1936.

That shows the number of pounds of freight handled in each direction.

Page 3 shows a list of typical shipments. Take the first shipment, for example. That left West Carrollton, Ohio, January 18, 1934. It consisted of four cases of envelopes weighing 139 pounds. The final destination was St. Charles, Illinois.

That was handled in regular railroad service to Geneva, Illinois, and by motor vehicle from Geneva to St. Charles, and the rates assessed on that shipment were the rail rates from West Carrollton, Ohio, to St. Charles, Illinois.

Q. It was handled throughout on railroad billing, was it not?

A. Yes, sir; railroad billing. The exhibit shows waybill number 243.

Q. All right. Go ahead.

A. Page 4 shows additional typical shipments.

Q. Now, Mr. Gregory, do those waybills—strike that.

These waybills are in the file of the Chicago & North [fol. 118] Western Railway; if anybody wants to examine them we can produce them, is that correct?

A. Yes, sir. I have here at the present time a copy of one of the original waybills as a typical shipment. If anybody wants to examine it, they may.

Q. You might state for the record what it shows.

A. This is Erie waybill No. E-46511, dated January 22, 1936, Newburgh, New York.

It covers a shipment of 203 pounds of art leather, destined to St. Charles, Illinois. It moved via the Erie Railroad to Chicago, and the Chicago & North Western Railway. That shipment was handled by motor vehicle from Geneva to St. Charles.

Q. Now, is there anything that you have—take page 5. That is Route No. 2, is it not?

A. Route No. 2, between Rochelle and Creston, Illinois; that is the same type of an operation, except that Creston is a main line point, and the freight is handled into Rochelle by motor vehicle from Rochelle to Creston.

Otherwise, it is no different than the operation covered by Route No. 1.

Q. They are both stations on the main line of the Chicago & North Western Railway?

A. Yes, sir.

Q. Go ahead, Mr. Gregory.

[fol. 119] A. Route No. 3, shown on page 9 of the exhibits, covers a similar operation between Rochelle and Ashton, including Flagg, Illinois, which is a small intermediate point to Ashton.

Those points are also on the main line of the Galena division.

Q. Go ahead with your explanation of the exhibit, please, Mr. Gregory.

A. Route No. 4 is explained on page 13 of the exhibit. We have the same detailed information for each route.

On that route the freight is handled to and from Dixon, Illinois, and then by motor vehicle from Dixon to Rochelle—no; wait a minute; Franklin Grove and Nachusa.

Pages 14, 15 and 16 contain statements of the tonnage handled and typical shipments, as I have explained in connection with Route No. 1.

Q. Those are all main line points—

A. Yes.

Q. —are they not?

A. Those are all main line points.

Q. Proceed.

A. Route No. 5 is shown on page 17, between DeKalb and Malta, Illinois. Those are main line points. The freight is handled to and from DeKalb by motor vehicle to Malta, which is the next station west of DeKalb.

Pages 18, 19 and 20 contain information as to the tonnage [fol. 120] actually handled and in each case I have shown on the exhibit the date on which this operation was established, in this case being May 1, 1935.

Q. Take page 19.

A. Yes.

Q. Those are shipments that are representative or typical, are they not?

A. That is right.

Q. And not all inclusive?

A. That is right. Those are typical shipments to show actual point of origin and final destination.

Q. Go ahead.

A. Page 21 shows Route No. 6 between Council Bluffs, Iowa, and Omaha, Nebraska. It contains the same information as shown for the other routes.

Page 28 is a map showing the actual highway used in this operation.

Q. Let us go to the next one, page 29.

A. Page 29 shows similar information for Route No. 7, between Wausau and Rothschild, Wisconsin. That route was established November 10, 1933.

The statement shows the tonnage handled from January 1, 1935, to December 31, 1936, and typical shipments which began on February—which began in February, 1934, up until May 5th, 1937.

[fol. 121] Q. During all of this time the Chicago & North Western Railway Company held itself out to transport traffic generally for the public according to its published tariffs?

A. Yes.

Q. Is that correct?

A. It is.

Q. Proceed.

A. Page 34 shows similar information for Route No. 8, between Hurley, Wisconsin, and Ironwood, Michigan. That route was established on October 23rd, 1934.

Pages 35 and 36 show the tonnage figures and typical shipments.

Page No. 38 shows similar information for Route No. 9 between Marinette, Wisconsin, and Menominee, Michigan.

Q. Is there anything you want to point out in connection with that operation?

A. I believe the exhibit explains that operation.

Q. Those pages, you mean?

A. Yes.

Q. Go ahead.

A. Page 42 begins Route No. 10, which is between Marinette, Wisconsin, and Escanaba, Michigan, there being a number of intermediate points included in that route.

Q. Those are all stations on the Chicago & North Western Railway, are they not, Mr. Gregory?

[fol. 122] A. These are all stations on the Chicago & North Western Railway.

Q. These motor vehicle movements involve the transportation of freight between the freight stations?

A. Between freight stations, yes, sir.

Q. All right. Is there anything you wish to point out in connection with that operation?

A. Pages 42 to 51 explain that route, and show the actual tonnage handled.

Q. And also illustrative shipments?

A. Yes, sir.

Q. Yes.

A. Page No. 52 shows similar information for Route No. 11, between Sheboygan and Green Bay, Wisconsin.

Q. Just a moment.

A. Page No. 53 shows Route No. 12—

Q. Just a moment. Does that include certain intermediate points?

A. Yes. In each case I have shown intermediate points.

Q. All right. Go ahead.

A. Page 53 shows Route No. 12 between Fond du Lac and Green Bay, including intermediate points.

Page 54 shows Route No. 13, between Green Bay and Clintonville, Wisconsin, with intermediate points.

Page 55 shows Route No. 14, between Green Bay, Wisconsin, [fol. 123] and Menominee, Michigan, including intermediate points.

Pages 56 to 64 show the tonnage handled via these routes, and typical shipments.

Q. Have you anything in particular you wish to point out in connection with those operations?

A. I believe pages 52 to 64 explain that operation completely.

Q. Now, let us go on the page 65.

A. Yes. Page 65 shows Route No. 15 between Deadwood and Lead, South Dakota. The operation was started October 1, 1933.

Page 66 shows the tonnage handled, January 1, 1935, to December, 1936.

Pages 67 and 68 show typical shipments.

Q. Both of these stations are in the Black Hills, are they not?

A. They both are, yes. Both of those stations are in the Black Hills.

Lead is a very high altitude above Deadwood. It is a very expensive train operation from Deadwood up to Lead, while it is only two miles by highway.

Q. The grades are heavy out there, are they not?

A. The railroad grade is very heavy.

Q. Go ahead.

A. Page 69 shows Route No. 16.

Q. That is between Red Granite and Neshkoro.

A. That operation has been discontinued.

Exam. Later: Just a moment.

[fol. 124] By Exam. Later:

Q. What page is that?

A. Route No. 16 is on page No. 69.

Exam. Later: I skipped that, I guess.

The Witness: It is 69 to 72, inclusive.

Exam. Later: Oh, yes. Go ahead.

By Mr. Gault:

Q. Continue with your explanation of the exhibit, Mr. Gregory:

A. Page No. 73 shows Route No. 17 between Proviso and Woodstock, Illinois, including intermediate points. In connection with that page I would like to point out that Norwood Park is within the Chicago commercial zone.

By Exam. Later:

Q. What about Proviso?

A. Proviso is also in the Chicago commercial zone.

Q. Is that your break-up yard on the west side?

A. Yes.

By Mr. Gault:

Q. Is it not a fact that we have very large less than carload transfer facilities at Proviso?

A. One of the largest less than carload transfer facilities in the United States.

Q. By the way, I forgot to ask you this, Mr. Gregory: You are familiar with the fact, are you not, that the Chicago & North Western Railway is a very large handler of less than carload freight, commonly called merchandise freight?

A. Yes, sir.

Q. All of those stations up to and including Des Plaines [fol. 125] are in the Chicago switching district?

A. Yes.

Q. Are they not?

A. Yes. Des Plaines is in the switching district.

Q. Are there any other comments you wish to offer, Mr. Gregory?

A. There is one thing about that route established on May 17, 1933. Perhaps Mr. Starr will explain the actual operation, but I do not believe we actually handled freight to Crystal Lake until April 1, 1935. On October 12, 1936, was when we actually handled freight to Woodstock.

Q. Go ahead with the next one.

A. Page 74 is Route No. 18, between Proviso, Illinois, and Algonquin, Illinois, including intermediate points, Dundee and Carpentersville.

Page 75 shows Route No. 19 between Proviso and DeKalb, including intermediate points. That route also includes Aurora, Illinois, which might be considered an off-route point. It is a few miles south of the main highway.

Page 76 shows Route No. 20 between Proviso and Belvidere, Illinois, including intermediate points.

Page 77 shows Route No. 21 between Proviso and Waukegan, including intermediate points, and likewise between Chicago and the same points. Niles Center and Evanston, Illinois are within the Chicago commercial zone.

[fol. 126] I might say in connection with the operation that freight is handled in railroad service to or from Proviso or Chicago. Sometimes the freight is handled from the Chicago freight station and sometimes from the Proviso freight station.

Page No. 78 shows Route No. 22, between Proviso and Chicago. That entire operation is within the Chicago commercial zone.

Pages 79 to 104 contain the information with respect to tonnage handled to and from these various points and also typical shipments.

Page 105 shows Route No. 23 between Proviso and West Chicago, established April 2nd, 1934.

Pages 106, 107, 108 and 109 contain information as to the tonnage handled and list typical shipments.

Mr. Gault: At this time, if the Examiner please, we offer in evidence Applicant's exhibit No. 4.

Exam. Later: Is there any objection?

Mr. Shields: If it goes to proof as to grandfather rights, we have no objection. If it goes to anything else other than that, there is an objection.

Exam. Later: Have you anything to say on that, Mr. Gault?

Mr. Gault: We are offering it for what it proves. We are claiming grandfather rights. We are confident we shall prove them, or have proved them, but if not, we are not waiving any other rights we may have in this hearing.

[fol. 127] Exam. Later: Is there any objection?

Mr. Cannon: Mr. Examiner, are the original records here so they can be studied? I refer to the pro bills, or any other documents from which this exhibit was made.

Mr. Gault: In this room?

Mr. Cannon: Yes.

Mr. Gault: No. Anything you want to look at we will get for you.

The Witness: We have some typical waybills.

Mr. Gault: We have some typical ones, if you want to look at them.

Exam. Later: You have them here in the room?

The Witness: Yes.

Mr. Gault: Some.

Exam. Later: I see.

Mr. Dayton: We have some typical ones.

Mr. Gault: Off the record.

Exam Later: Off the record.

(Discussion outside the record.)

Exam. Later: Back on the record. Is there any objection to this exhibit?

Mr. Cannon: I object.

Exam. Later: State your ground.

Mr. Cannon: I object to the introduction of any data subsequent to June 1, 1935, for the reason that I do not [fol. 128] believe we have been properly put on notice that this case was one concerning convenience and necessity over the routes set out in the application.

I believe this because of the fact that the notice does refer to the application and the application makes no demand for rights under convenience and necessity, subsequent to June 1, 1935.

Exam. Later: I am going to receive the exhibit subject to your objection.

(Applicant's Exhibit 4, Witness Gregory, received in evidence.)

Mr. Gault: Of course, it is certainly competent under a grandfather case, because it shows continuous operation. Of course, I have no objection—

Mr. Cannon: Mr. Examiner—

Mr. Gault: I have no objection to this gentlemen making any kind of a record he wants on that point of convenience and necessity.

Mr. Cannon: If the Examiner please—

Mr. Gault: I think they ought to make some sort of general objection, and we will be through with that and it can be reserved on the record; then we can proceed.

Exam. Later: Mr. Cannon?

Mr. Cannon: Mr. Examiner, if it is to show continuous operation, it only shows the year 1936 and does not show any [fol. 129] date subsequent to 1936.

Mr. Gault: Well, Mr. Cannon—

The Witness: I stated that we started to compile these records in the early part of 1937, thinking this bearing might be heard any time.

We did not bring it clear up to the last minute. We will have other witnesses.

Mr. Shields: In line with the suggestion of counsel for the applicant, I think it would be well if we could raise that point on the record, and then not bother with it from now on.

Of course, my objection to the admission of this exhibit goes to—as it may be applicable—anything other than proving grandfather rights, under the grandfather section of the Act.

If it goes toward proof of convenience and necessity, I seriously object for the reason that we have not been put on notice that this is a hearing where convenience and necessity will be proven, and we are taken by surprise, if that is involved, and we will be prejudiced if the hearing continues with the admission of evidence of that sort, on that issue.

Exam. Later: I cannot limit the consideration the Commission may give to any evidence before it. I think you gentlemen are well aware of that fact.

Whatever this evidence proves or tends to prove under the issues as set down for this hearing,—for hearing at [fol. 130] this time and place, that purpose it will be considered for, and in admitting the exhibit, it is done with that understanding. You, of course, will have a chance to bring your surprise to the attention of the Commission.

My own view is that the exhibit is intended to show that the operations were commenced prior to June 1, 1935, and that they have been operated continuously since that time. There is one question raised in connection with this which at the present time nothing has been said about, but which I assume you are going to tie up later and that is the names of the truckers which are—for instance, on page 2 it says "Name of contractor: Henry Roehlk".

I think that there must be some explanation in connection with those particular things, but I assume you are going to put that in.

Mr. Gault: We intended to cover that.

Exam. Later: Later on?

Mr. Gault: Yes.

Exam. Later: That is all right.

Mr. Cannon: Mr. Examiner, since we are discussing this, the only notice I have—I want to be sure I have the right one—is this: It says "It is further ordered, that in the event the evidence indicates that applicant is entitled to receive a form of authority other than that applied for, such other form of authority will be granted".

[fol. 131] I understand they have made application for a common carrier certificate. I assumed, and I believe I did reasonably so, that the other form might be authority as a contract carrier.

Mr. Gault: Mr. Examiner—

Exam. Later: Before we go any further on this discussion,—

Mr. Cannon: We have to settle this question pretty soon.

Exam. Later: Off the record.

(Discussion outside the record.)

Mr. Cannon: I would like to have this on the record.

Exam. Later: All right. On the record.

Mr. Cannon: The Examiner has stated that the Commission has in previous cases and might in this case grant a certificate upon a showing of convenience and necessity that might be made at this time.

He also stated that the parties did have notice, or the parties might have notice that such a situation might arise.

I wish at this time to call the attention of the Commission to the fact that the notice received by protestants states:

“It is further ordered, that in the event the evidence indicates that applicant is entitled to receive a form of authority other than that applied for, such other form of authority will be granted.”

This protestant now alleges surprise due to the fact that protestant believed that the word “form” meant a distinction between common carrier certificate and contract carrier license. Protestant is not ready to proceed to properly protect itself in any proceeding that may involve a showing of convenience and necessity over the routes set out in the application.

Exam. Later: I take exception to your quotation of what I said.

Mr. Cannon: Put it in the record, then.

Exam. Later: I think the record will show exactly what I said, and with that alteration and in accordance with what I said—O. K.

Mr. Cannon: I did not mean to misquote you. I just wanted to have it clear. I understand you to say that this is a proceeding—

Exam. Later: All I said is—

Mr. Cannon: —in which the Commission might grant—

Exam. Later: All I said was that the Commission would consider the evidence for any purpose or any issue it might tend to prove.

Mr. Cannon: And in the past that they had granted certificates of convenience and necessity upon this type of application.

Exam. Later: Well, now, the record—

Mr. Cannon: That is right.

Exam. Later: I mean, the best evidence is the Commission's report on that.

[fol. 133] Mr. Cannon: That is right. I think my statement is correct.

Exam. Later: You have left me nothing to rule on.

Mr. Cannon: I did not intend to.

Exam. Later: All right. Off the record.

(Discussion outside the record.)

Exam. Later: We will now adjourn until 2 o'clock p. m.

(At 12:30 o'clock p. m., adjourned until 2 o'clock p. m.)

Afternoon Session—2 o'clock p. m.

Exam. Later: Come to order, gentlemen. Are you ready to proceed, Mr. Gault?

Mr. Gault: Yes.

Exam. Later: All-right; proceed.

S. E. Gregory previously sworn, resumed the stand and testified as follows:

Direct examination (continued).

By Mr. Gault:

Q. Mr. Gregory, have you prepared another exhibit which you desire to present in this case?

A. Yes.

Mr. Gault: If the Examiner please, I ask that this be marked Applicant's Exhibit 5 for identification.

Exam. Later: It may be so identified.

(Applicant's Exhibit 5, Witness Gregory, identified.)

By Mr. Gault:

Q. Mr. Gregory, will you please go ahead in your own way and explain that exhibit.

[fol. 134] A. Exhibit No. 5 is a Jumbo supplement to all tariffs issued by the Chicago & North Western Railway Company which name less than carload rates, and carries a provision for the substitution of highway vehicle service for rail service between stations served by the rail carriers.

A very similar clause, or the identical clause, is published in all other tariffs, all agency issues, of other railroads.

Q. Mr. Gregory, the handling of this traffic as you have explained it in your Exhibit No. 4 and elsewhere, is continuing and has continued right up to the present time?

A. Yes, sir. This service is in effect today.

Q. You are handling, in that connection, and holding yourself out to handle general freight as authorized in the applicable railroad tariffs?

A. Yes, sir; under the provisions as shown in Exhibit No. 5 we protect the railroad rates on every shipment handled in these operations.

Mr. Cannon: Are you offering that exhibit, Mr. Gault?

Mr. Gault: Yes. We offer the exhibit in evidence at this time.

Mr. Cannon: I object to the introduction of Exhibit No. 5 for the reason that it says, "Issued December 23, 1937. Effective date December 31, 1937", which is subsequent to June 1, 1935, for the reason that any shipments involved in 1937 are not part of this case, and—

[fol. 135] Mr. Gault: Well, now, Mr. Cannon—

Mr. Cannon: And I cannot see—

Mr. Gault: This tariff—

Mr. Cannon: Just a moment, Mr. Gault. Let me finish what I am saying.

Mr. Gault: Pardon me.

Mr. Cannon: I cannot see where this exhibit has any bearing on the case at all.

Mr. Gault: Let me ask this question:

By Mr. Gault:

Q. Mr. Gregory, this tariff you have referred to is a re-issue of a similar tariff that has been in effect for some time

A. It is a re-issue of a similar tariff, but on June 1, 1935, we were not required by the Interstate Commerce Commission to publish that clause.

That clause was published when the Interstate Commerce Commission got out an order requiring such publication.

By Exam. Later:

Q. What date was that?

A. I do not know the exact date, but this tariff has been re-issued a number of times.

Exam. Later: I see.

By Mr. Gault:

Q. The rail rates have always been charged on these shipments—

A. Yes, sir.

Q. —during the period covered here?

[fol. 136] A. Yes, sir. Rail rates have always been assessed on the shipments they handled on those tariffs.

Exam. Later: Could you supply that date when you first published that provision contained in this particular tariff supplement?

The Witness: Yes, sir, I could.

Exam. Later: How long will it take you to get that?

The Witness: I could get it by telephone in about ten minutes.

Mr. Gault: As soon as the gentleman is through, Mr. Examiner, he will call up.

Exam. Later: All right.

The Witness: It will only take me two or three minutes to do that.

Exam. Later: All right. Are you offering this exhibit in evidence now, Mr. Gault?

Mr. Gault: We offer Applicant's Exhibit No. 5 in evidence, if the Examiner please.

Mr. Cannon: I think until that time, you cannot rule on this.

Exam. Later: I am going to hold in abeyance my ruling on that.

Mr. Cannon: All right.

Exam. Later: We will bring that matter up again.

Mr. Cannon: Very well.

[fol. 137] Exam. Later: Is there anything further you desire to add, Mr. Gregory?

The Witness: Just a minute. Let me look at the balance of these exhibits. I had a few notes.

By Mr. Gault:

Q. Is there anything further you desire to add to your direct examination, Mr. Gregory?

A. I think that is all, Mr. Gault.

Mr. Gault: You may cross-examine.

Mr. Cannon: Before beginning cross-examination, I would like to ask Mr. Gault one question, which will probably save time on cross-examination.

Exam. Later: Very well.

Mr. Cannon: Do I understand you are going to have Mr. Starr on the stand?

Mr. Gault: Yes, indeed.

Mr. Cannon: I think the questions I will ask of Mr. Starr would be the same which I would ask of Mr. Gregory. I think we can save time.

If he is going to take the stand and testify, I believe I will have no questions of this witness.

Mr. Gault: All right.

Exam. Later: Is there any cross-examination of this witness?

Mr. Shields: Yes.

Exam. Later: Go ahead, Mr. Shields.

[fol. 138] Cross-examination.

By Mr. Shields:

Q. Mr. Gregory, referring back to Exhibit 4, representing typical service over the various routes, and particularly Route No. 1 between St. Charles and Geneva, both Illinois points, the first item there, January, 1935—that is, the first item in Sheet 2, was that handled by truck, all of it?

A. Yes, sir. That is the total tonnage handled by motor vehicle during the month of January, 1935, between Geneva and St. Charles. When you go on further on that same page, it shows you the amount forwarded from Geneva, the amount received at Geneva, and the amount forwarded from St. Charles and received at St. Charles.

Q. That is true.

A. Naturally, it is either from St. Charles to Geneva, or from Geneva to St. Charles.

Q. That is true of the same comparable sheet all the way through the exhibit?

A. That is correct.

Q. Is that right?

A. Yes.

Q. Now, Mr. Gregory, turn to sheet number 3.

A. Yes.

Q. The first waybill listed is dated January 18, 1935, No. 343.

A. 243.

[fol. 139] Q. 243, yes.

A. Yes.

Q. Was that handled by truck between Geneva and St. Charles?

A. Yes, sir. That is a list of the typical shipments. What we are trying to do there is to give you a complete picture as to just how a shipment is handled.

Q. That moved on a railroad waybill, or freight Bill?

A. Railroad billing, yes, sir.

Q. What means have you of determining from the bill that which moved by truck?

A. From the waybill?

Q. Yes.

A. We have no means of determining from the waybill, but the station agent makes an abstract of every shipment that is put on the trucks and we know of every shipment that is handled that way.

Mr. Galt: That is sent to the accounting department?

The Witness: That is sent to the accounting department, yes, sir.

Mr. Shields: Let me ask you this:

By Mr. Shields:—

Q. From what records—I am confining my question to sheet 3, as being comparable all the way through the exhibit—from what records of the railroad was that information taken?

A. That is taken from a manifest open to inspection by [fol. 140] anybody who might want to see it, in the railroad's records.

Q. What does that manifest represent?

A. I can show you a copy on the—I can show you a copy of that form, if you wish.

Q. What I meant to ask was this: Does the manifest you have in mind represent shipments handled by truck exclusively?

A. This manifest I referred to is Form No. 177, made out especially for that purpose.

Q. Would there be any shipments appearing on this manifest form that might not have moved by truck?

A. No, sir, there would not.

Q. Does the driver of the truck sign for the shipments and bills covering the shipments on this manifest?

Mr. Gault: Mr. Starr will answer that question.

The Witness: I believe you had better ask Mr. Starr, who is the operating man, on that.

Mr. Shields: I presume then from that, you are going to cover the truck handling of the shipments more in detail by some other witness?

Mr. Gault: Yes.

Mr. Shields: All right.

Mr. Gault: By another witness.

Mr. Shields: Very well.

Mr. Gault: We will put on the man, who originated all of these transactions and knows all about it.

[fol. 141] Mr. Shields: Very well. I think that is all I have.

Mr. Axelrod: Will he testify to the contracts in effect?

Mr. Gault: To the extent it may be necessary. He will tell you all he knows about it, if you want to know.

Mr. Axelrod: I see.

Mr. Gault: They speak for themselves, of course. They are part of the record now.

Exam. Later: Is there any further cross examination?

Mr. Munsert: I have a few questions I would like to ask the witness.

Exam. Later: Mr. Munsert:

By Mr. Munsert:

Q. In the 22 routes covered by the application, are there any intermediate towns to be served which are not at this time located on the line of the Chicago & North Western Railway?

A. No, sir, there are not. The only intermediate points to be served are the Chicago & North Western Railway freight stations.

Q. As I understand the proposal, it is more or less the offering of an alternative service by the North Western Railway, is it not?

In other words, you will either be able to haul that freight between those points by your railroad, as you have done, or you can switch it to the truck if you want to?

A. That is correct.

Q. Is that correct?

[fol. 142] A. That is correct. It is a substitute service.

Q. So it is really a service that you have had or will have had a line haul on either before or after the truck service, is that right?

A. Yes, sir.

Q. That applies to traffic originating on lines other than the North Western?

A. It applies to any traffic handled under railroad billing.

Q. In these various routes, for example, on your Exhibit No. 4, page 12—no; Route No. 12, for example, between Fond du Lac and Green Bay, just for the sake of discussion, between those two towns are several other cities, are there not?

A. There are—

Q. That is, between Fond du Lac and Green Bay?

A. There are, but I do not—there are some other stations, that is true.

Q. Other stations on the Chicago & North Western Railway?

A. Yes, sir.

Q. But, as you before stated, you do not attempt to serve any towns by this trucking arrangement that are not now stations of the North Western, in any case?

A. We have always held ourselves out to provide service to any intermediate point, and I have listed here the points we have actually been—

Q. I do not think you understood the question.

[fol. 143] Mr. Gault: You do not mean intermediate generally; you mean intermediate with respect to railroad stations.

The Witness: I mean intermediate railroad stations.

Mr. Munsert: What I want to know is this:

By Mr. Munsert:

Q. With reference to this Route No. 12 between Fond du Lac and Green Bay, under your proposal do you want to

furnish your trucking service to any cities that you do not now furnish railroad service to, that are not served by your line?

A. We do not offer any service to any point we do not serve with our rails.

Q. And you want—

A. That is true of all these points. There is a railroad freight agent at every one of these points.

Q. Now, Mr. Gregory—

A. We do not propose to serve any point except railroad freight stations.

Q. Between these two points, for example, Fond du Lac and Green Bay, you will accept traffic originating at any intermediate point for movement, say, up to Green Bay, will you not?

A. Yes, sir.

Mr. Gault: You mean any intermediate freight station on the Chicago & North Western Railway?

Mr. Munsert: That is right.

The Witness: That is right.

[fol. 144] By Mr. Munsert:

Q. Now, assume that the authority you are seeking is granted, and you installed—or you continued, let us say, the operations.

Is it your intention to discontinue the less than carload rail service between these points?

A. No, sir, it is not.

Q. To what extent will there be substitution of trucking service?

A. Well, large shipments that require a car are always put into a railroad car.

Q. You might operate the same number of trains between these points as you do now?

A. We might operate the same number of trains, yes, but it would not mean with the same number of cars, naturally.

Q. That is, wherever you had a car put onto the truck, you would not have it on the train?

A. That is right.

Q. Is that correct?

A. Yes.

Q. But you do not contemplate any abandonment of any of your rail operations, or anything like that?

A. This is not a new operation. This operation is in effect today and has been in effect since June 25th, 1934, so there is no change to be made. It is just a continuation of the operation that has been performed ever since June 25th, 1935.

[fol. 145] Mr. Munsert: May we go off the record?

Exam. Later: Off the record.

(Discussion outside the record.)

Exam. Later: Back on the record. Is there anything further?

Mr. Munsert: I do not believe so.

Mr. Axelrod: I have just one question.

By Mr. Axelrod:

Q. Mr. Gregory, as I understand it, prior to and subsequent to June 1, 1935, the Chicago & North Western Railway Company held itself out to perform a railroad service over the routes and to all of the points that are claimed in this application, is that right?

A. We did then and we do now.

Mr. Axelrod: That is all.

Mr. Shields: I have one more question.

Exam. Later: There was—

Mr. Shields: If I may be permitted one more question—

Exam. Later: All right.

By Mr. Shields:

Q. Were there any of these truck operations that you have discussed, whether they are listed here in this list of points on 23 routes or not, that have been started since June 1, 1935?

A. If you will refer to Exhibit 1 you will find that it states the date on which each route was started.

Q. That is, so far as these are concerned—that is, as far [fol. 146] as this list is concerned.

A. These 23 routes, which cover this application; you will notice every one of them started before June 1, 1935.

Mr. Shields: That is all.

By Exam. Later:

Q. One of the answers you gave was that in all instances there would be a rail haul on shipments that you would handle in this so-called substitute service.

In other words, you would not pick up a shipment, say, at your station here in Chicago,—

A. That is right.

Q. —and handle it to any of these points direct by truck, is that right?

A. I might qualify that. I think the question which was asked referred to shipments coming from beyond, on which we would always have a rail haul to the point where it was put on the motor vehicle.

Now, there may be some points here where we have a route, for instance, between Green Bay and Fond du Lac, where if we were offered a shipment at Green Bay to go to Fond du Lac, it would be handled on railroad billing, but it might move by this motor carrier operation, or it might move in a car.

There are a few points like that, where that might happen if you had a local shipment.

Q. How about between here and Waukegan, Chicago and Waukegan?

[fol. 147] A. If we were offered a shipment at Chicago for Waukegan, the same condition would exist.

Mr. Munsert: You mean by that it could go by truck all the way?

The Witness: Yes; I mean by that, that it could go by truck all the way.

By Exam. Later:

Q. But, the rates charged would be those named in the rail tariff?

A. The rates charged in every case would be the railroad rate published in the railroad tariff.

Q. What provision do you have other than this tariff for that charge?

A. That is the only provision we have in the railroad tariff.

Q. In other words, you provide a substitute service at the rates published in your rail tariff?

A. That is right.

Exam. Later: That is all I have.

Mr. Gault: That is all.

Exam. Later: Are there *are* further questions of this witness, gentlemen?

(No response.)

Exam. Later: You may be excused, Mr. Gregory.

(Witness excused.)

Exam. Later: Call your next witness, Mr. Gault.

Mr. Gault: Mr. Starr, take the stand, please.

[fol. 148]. Exam. Later: Be sworn, Mr. Starr.

W. W. STARR, was sworn and testified as follows:

Direct examination:

By Mr. Gault:

Q. Please state your full name for the record, Mr. Starr.

A. W. W. Starr.

Q. What is your occupation?

A. Supervisor of merchandise, Chicago & North Western Railway Company, Chicago, Illinois.

Q. Mr. Starr, you have been in railroad service for a good many years, have you not?

A. About 31 years.

Q. All in the operating department generally?

A. Practically.

Q. Especially with the North Western?

A. Practically all, and all in the North Western was in the operating department.

Q. Will you state just briefly what the duties of the supervisor of merchandise traffic are?

A. To make the schedules and direct the handling of less than carload freight.

Q. That is, work out the schedules—

A. And direct the handling.

Q. And direct the handling of it?

[fol. 149] A. Yes.

Q. To meet the convenience of the public so far as you can?

A. To provide the best service to the public at the best cost to the company.

Q. How long have you been giving special attention to merchandise freight?

A. Over a period of about 21 years.

Q. By the way, the Chicago & North Western Railway Company is a very large handler of merchandise traffic, is it not?

A. I believe the largest in this part of the country.

Q. It has extensive facilities at Proviso for that purpose?

A. Yes, sir.

Q. When were those facilities constructed?

A. The freight house was completed in 1927, October 1st, and for the year following that time there were different stations brought into there and consolidated.

In other words, we did not attempt to put everything in there on October 1st, but over a period of a year we finally got all of the freight we desired to handle through there located there at that station.

Q. We have freight facilities here in Chicago, have we not?

A. Yes, sir, at our Wells Street station in down town Chicago.

Q. We also have facilities, organization and equipment for handling merchandise freight at other stations and generally over the railroad?

[fol. 150] A. Yes, sir.

Q. Now, Mr. Starr, you might take this Exhibit No. 4—you have a copy of that exhibit, have you not?

A. Yes, sir.

Q. That shows an operation between St. Charles and Geneva, does it not?

A. Yes.

Q. The contractor shown there is Henry Roehlk, is it not?

A. Yes, sir.

Q. You might state just what this so-called contractor does.

A. He furnishes drivers and trucks to continue the movement of our rail freight between the two stations mentioned.

Q. And the schedules are those fixed by the railroad?

A. Yes, sir.

Q. They are coordinated with the rail service?

A. Yes.

Q. Is that the fact?

A. Yes, sir.

Q. And if there is desired to be a change, is it the fact that you inform the contractor and this contractor conforms himself thereto?

A. Yes.

Q. Is that right?

A. We direct the schedule under which he operates.

Mr. Gault: If the Examiner please, this contract is [fol. 151] already of record. It is attached to the application.

Exam. Later: Off the record.

(Discussion outside the record.)

Exam. Later: Back on the record.

By Mr. Gault:

Q. Mr. Starr, is there anything in connection with that route to which you wish to call attention?

A. Nothing that has not already been expressed.

Q. Now, if you will go on to page 5, Route No. 2—

Exam. Later: What is the date of that contract?

The Witness: August 31, 1933, was the start of the operation.

Mr. Gault: Are you looking at the contract—

Exam. Later: Yes.

Mr. Gault: —attached to the application?

Exam. Later: Yes.

Mr. Gault: I think they are, generally speaking, in a certain order. At least, the copies were.

Mr. Dayton: I think I can find them.

Mr. Gault: Mr. Dayton is the man who drew them up, so he can tell you all about it.

Exam. Later: That is all there is in the application.

Mr. Gault: What is that?

Exam. Later: You have one there for Lewis. That is the only one I have seen so far. There are only two or three of these contracts in the application.

[fol. 152] Mr. Dayton: Perhaps we sent the wrong application.

Mr. Cannon: Which ones are those, Mr. Examiner?

Exam. Later: What?

Mr. Cannon: Which ones are those that are in the application?

Exam. Later: We will have to go through. Would you go through and check out the ones that are in here?

Mr. Dayton: Yes.

Exam. Later: There is one here, Grover Lewis; L. & L. Truck Service. Then there is Roehlk. I guess that is all.

Mr. Gault: Roehlk is number 1.

Exam. Later: That is the only one there is in here, besides Lewis.

Mr. Dayton: They did not send you all of the file.

Exam. Later: That is all there is. They bind it up this way.

Mr. Dayton: All of these were put in.

Exam. Later: They have been lost, then.

Mr. Gault: You had an informal conference here, did you not, on this application? What was the status of the record then?

Exam. Later: They do not have the application; they do not have the application in those informal conferences.

Mr. Dayton: Here is the way we sent the file in. (Indicating.) With all of this attached.

[fol. 153] Examiner Later has not got any of these at all.

Exam. Later: This original agreement was cancelled August 31, 1933.

Mr. Dayton: Have you the A-1 application here?

Exam. Later: Yes. This is the BMC A-1.

Mr. Dayton: Then they must have kept the contracts back there in Washington.

Mr. Gault: If the Examiner please—

Exam. Later: They file them right in the docket, just this way.

Mr. Dayton: You do not have them?

Exam. Later: They have been lost, then, because they are not here. You have the A, and here is the way they are. (Indicating.) Here is your A-1, see?

Mr. Dayton: Yes.

Mr. Gault: Let us see this Roehlk contract.

Exam. Later: Your 1933 contract is not in there.

Mr. Dayton: The 1933 contract?

Exam. Later: No; the 1931 contract, that was.

Mr. Dayton: Here is the 1933 contract.

Exam. Later: If you will notice this contract—there it is. That is 1931, cancelled August 31, 1933.

Mr. Dayton: They certainly have got another one down in Washington, because that is the one that was filed. I do not know how many copies we sent them.

[fol. 154] Mr. Gault: Then there is nothing in the docket here, no contract of this kind at all?

Exam. Later: No.

Mr. Gault: Well, now, all of these contracts are more or less the same kind. They are in this form (indicating).

Let us have one of these—let us see it. Have you another one of those?

Mr. Axelrod: Here is one.

Mr. Gault: That is all right. Never mind. We will have to handle this in another way, then.

Exam. Later: Off the record.

(Discussion outside the record.)

Exam. Later: Back on the record.

Mr. Gault: If the Examiner please, I would like to have this paper identified as Applicant's Exhibit No. 6.

Exam. Later: It may be so identified.

(Applicant's Exhibit 6, Witness Starr, identified.)

Mr. Gault: If the Examiner please, it appearing that the copies of the contracts which have been referred to in Exhibit No. 4, which had been prepared and sent to the Commission, are not present in the files, we have had identified as Exhibit No. 6 a copy of the contract of June 25, 1934, between the Chicago & North Western Railway Company and the Leicht Transfer & Storage Company.

This copy has been handed to me by representatives of [fol. 155] that concern who are present and appearing in this case. That has been identified as Exhibit No. 6 as a sample of the type of contracts that were used in this transaction, the contracts referred to in Exhibit No. 4.

Mr. Shields: Who is the contracting party?

Mr. Gault: The Leicht Transfer & Storage Company.

Exam. Later: L-e-i-c-h-t? Is that correct?

Mr. Gault: Yes.

Exam. Later: That has been identified as Exhibit No. 6.

Mr. Gault: Yes.

Exam. Later: Just before you were examining that information that you have there, you stated you would furnish copies of contracts of all carriers handling shipments

covered by Exhibit No. 4, from June 1, 1935, to the present time.

Would you do that within thirty days?

Mr. Gault: If the Examiner desires, yes.

Exam. Later: I desire that.

Mr. Gault: All right.

Mr. Munsert: Will copies be sent to all parties of record as well?

Mr. Gault: Let us wait until this is over. We will send copies of any contract that anybody wants. I would like to be relieved of the burden of sending copies of contracts as to which there is no interest among those present.

I suggest that you gentlemen, if you will be kind enough—
[fol. 156] Exam. Later: Is that agreeable with you gentlemen, or do you want copies of all contracts?

Mr. Shields: We can only eliminate one or two of those routes.

Mr. Munsert: It seems to me if Mr. Gault has to prepare copies for the Commission, it is an easy matter to mimeograph another dozen or more, and serve them on parties of record, although we do not want to give you any more of a task than is necessary. We do not want to put you to any more expense than is necessary.

Mr. Gault: It is not a matter of expense.

Mr. Slater: It is rather important. There might be a difference in that store-door delivery. We would not know without an examination of each of them.

Exam. Later: You will follow the usual procedure; all parties have asked that they be furnished with copies in the usual manner.

Mr. Gault: All right.

Exam. Later: Off the record.

(Discussion outside the record.)

Exam. Later: Back on the record. Proceed.

Mr. Gault: For the purpose of the present record, we offer Applicant's Exhibit No. 6 in evidence as an indication of what these contracts were.

Mr. Munsert: Mr. Examiner, I do not want to be argumentative or anything, but if Exhibit 6 is a copy of what I have here in my hand, which is one of the blanks he distributed this morning—

Mr. Dayton: No, it is not.

Mr. Gault: They are substantially the same.

Mr. Munsert: I am afraid an objection should stand against that, because "substantially the same" in view of this problem which is unique, and which will be in some degree technical, as to the legal aspects of it—

Mr. Gault: It is wholly immaterial to me. I will withdraw Exhibit No. 6, as far as that is concerned.

Exam. Later: It has been identified in the record, and it will stand in the record, with the objection noted.

I am going to receive it with that understanding, just the way you offered it.

Mr. Gault: As a matter of convenience.

Exam. Later: That is all; it is merely a matter of convenience, because the contracts that are furnished will be the evidence upon which we will have to decide the case.

Mr. Gault: Exactly; I have offered that merely as a convenience.

Exam. Later: That is all right. The exhibit is received.

(Applicant's Exhibit 6, Witness Starr, received in evidence.)

Mr. Gault: If they want to ask some questions—

[fol. 158] Mr. Munsert: Mr. Examiner—

Mr. Gault: —there is something to talk about.

Mr. Munsert: Mr. Examiner, your statement is in the record which you just made, is it not?

Exam. Later: Yes.

Mr. Cannon: Now, if the Examiner please, as I understand it, we have a contract that has been introduced as an exhibit which is identical with the contracts that are in effect with these various carriers over these routes, which we can use for cross-examination, as to terms.

Mr. Gault: I think they are substantially identical, for that purpose.

Mr. Cannon: All right.

Exam. Later: Substantially.

Mr. Gault: That is right.

Exam. Later: Whether it is exactly the same as all contracts, neither side is admitting nor denying.

Mr. Gault: Correct; but it is my belief that all of the questions these gentlemen want to raise in this case can be raised.

Exam. Later: Right off of that.

Mr. Gault: Right off of that.

Mr. Cannon: I am satisfied with that.

Mr. Gault: All right.

Exam. Later: Let us proceed, gentlemen. Had you finished your direct examination of Mr. Starr, Mr. Gault?

Mr. Gault: No.

Exam. Later: Proceed.

By Mr. Gault:

Q. Now, Mr. Starr, to make a little time here, refer back to Exhibit No. 1.

A. Yes.

Q. You can testify, can you not, that those operations were started at the time shown on Exhibit No. 1?

A. Yes, sir.

Q. In one or two cases, you can recall, can you not, that there were earlier contracts which were superseded by ones in effect along in—or, on June 1, 1935?

Do you recall that?

A. In accordance with the dates shown on Exhibit 1, they are the actual dates of the commencement of the operations.

Q. That is right. Now, going on to Route No. 2, that starts on page 5.

A. Yes.

Q. The person with whom the contract is in that case is H. W. Colwill?

A. Yes.

Q. Is there anything you desire to invite attention to in connection with that operation?

A. Nothing further than has been introduced.

Q. How about No. 3, beginning on page 9?

[fol. 160] A. (No answer.)

Q. Is there anything that you wish to invite attention to with respect to that?

A. The operation started May 1, 1935.

Q. Yes.

A. Lester Farver is the party who handles the freight for us.

Exam. Later: Just a moment, please.

By Exam. Later:

Q. I notice that you have two dates on this exhibit, May 1, 1935, and September 1, 1935. Which is correct?

A. September 1, 1935, was not correct.

Q. That should be stricken?

A. Yes.

Q. That is on page 10 of Exhibit 4?

A. Yes.

Mr. Gault: Yes.

Exam Later: All right.

By Mr. Gault:

Q. Mr. Starr, do you recall that the contract of May 1, 1935, was re-issued as of September 1, 1935?

A. It was re-issued September 1, 1935.

Q. Yes.

A. It has been re-issued once since that time, where there was a change in rates, which made it necessary.

Q. You mean, in the compensation—

A. To the contractor.

Q. The contractor?

[fol. 161] A. Yes, sir.

Q. Now, let us refer to Route No. 4, on page 13.

A. Yes.

Q. Is there anything you desire to call attention to there?

A. Nothing other than has already been stated.

Q. What about Route No. 5, page 17?

A. The same applies.

Q. The same applies?

A. Yes, in so far as Route No. 5 is concerned.

Q. I imagine the same applies also to Route No. 6?

A. Yes.

Q. That is on page 21.

A. Yes, sir.

Q. Now, refer to Route No. 7, Wausau to Rothschild, on page 29.

A. Yes.

Q. Is there anything that you have in mind to point out there?

Exam. Later: Just a moment, please, before you leave page 22.

Mr. Gault: Yes.

Exam. Later: You show there Omaha Merchants Express & Transfer, between Council Bluffs and Omaha. Is there any question about pick-ups or deliveries being outside of the municipal area or commercial zone of that town?—Although I do not think it has been determined.
[fol. 162] I thought I might just ask that question.

Mr. Gault: We have always understood that South Omaha, for this purpose was substantially the same as Omaha.

Exam. Later: Yes.

Mr. Gault: It is all one industrial district, there.

Exam. Later: All right.

The Witness: The operation, in this connection, is between our freight stations, at the terminals, between Council Bluffs and Omaha—

Mr. Gault: South Omaha.

The Witness: —and does not involve pick-up or delivery service at all.

By Exam. Later:

Q. It is just between stations?

A. Between stations, yes.

Exam. Later: That is all right.

Mr. Gault: All right.

By Mr. Gault:

Q. Let us go to No. 7, on page 29.

A. Yes.

Q. Is there anything there you desire to call attention to?

A. No, sir.

Q. Now, refer to page No. 34, Route No. 8.

A. I might add in this case that while this operation actually started on October 23, 1934, there was a supplementary contract issued to William McRae, because of his father, Dave McRae, having passed away.

[fol. 163] That accounts for the two dates shown.

Exam. Later: I see.

By Mr. Gault:

Q. Mr. Starr, in connection with the routes that you have already referred to, and those that you will refer to, it is a fact, is it not, that you are thoroughly familiar with them and were instrumental in having them established?

A. Yes.

Q. And you have personal knowledge of all these transactions?

A. Yes.

Q. Is that a fact?

A. That is a fact.

Q. Go on with Route No. 9.

A. There is nothing further to offer on that, other than the showing in the exhibit.

Q. What about Route No. 10? Is there anything you want to emphasize or refer to particularly there?

A. No, sir, nothing there other than is shown in the exhibit.

Q. All right. Let us go on to Route No. 11, Mr. Starr, between Sheboygan and Green Bay, Wisconsin. Is there anything in particular there that you want to call attention to?

A. Nothing in particular there.

Q. Is the same true of Route No. 12?

A. Yes.

Q. 13?

A. Yes.

[fol. 164] Q. 14?

A. All of those operations are handled by motor vehicle by the Leicht Transfer & Storage Company.

Q. What about 15?

A. (No answer.)

Q. That is the route between Deadwood and Lead. Is there anything in particular you wish to call attention to there?

A. No.

Mr. Shields: I notice there are two dates on sheet 66, again:

The Witness: I do not know the reason for the latter date, but that operation actually started on October 1, 1933.

Mr. Gault: Just a moment. If you do not mind, Mr. Dayton, who prepared these contracts, will tell you.

Mr. Shields: All right.

Mr. Dayton: The second date was when the contract was—a new contract was entered into, in January, 1936, due to the fact that the ownership of the Lead-Deadwood Company had changed hands.

Mr. Shields: It was the same operation?

Mr. Dayton: The same operation, but they just changed owners.

Mr. Shields: All right.

Mr. Gault: Let us go on.

By Mr. Gault:

Q. What about No. 18, Mr. Starr, on page 70—wait a [fol. 165] minute. Strike my reference to page 70.

Now, we come to page 73 of Exhibit No. 4, Route No. 17.

A. Yes.

Q. You have an explanation to make there in connection with Woodstock, have you not?

A. Yes.

Q. Proceed to make that explanation, Mr. Starr.

A. All of the operations in connection with Route 17 covered by several contracts, were started in accordance with the dates shown, and then extended.

Q. You mean several contracts with the same parties?

A. With the same parties, yes, sir.

Q. Go ahead.

A. To Cary and Crystal Lake we actually handled freight commencing April 1, 1935.

Exam. Later: Just a minute.

The Witness: Woodstock, October 12, 1936.

Exam. Later: What was that date?

The Witness: October 12, 1936.

Exam. Later: Go ahead.

The Witness: The operation was extended from Crystal Lake to Woodstock on that date; to Sycamore, which is an alternate route used in connection with the operation between Proviso and DeKalb, operations started in November of 1936, November 17, 1936.

[fol. 166] In connection with this particular set of operations, there is considerable cross country movement of generally light vehicles. To illustrate, the North Western goes three directions from Chicago; the Wisconsin division, in

two parts, known as the Milwaukee and the Wisconsin divisions, move north and northwest; and the Galena division moves directly west.

These operations have been going on since we started, in more or less of a circle from the Galena division to the Milwaukee division. For instance, there might be a piece of light equipment at Crystal Lake or Woodstock that there would be no load for, and the equipment could move over to DeKalb or Waukegan.

That is strictly for the convenience and prompt movement of equipment.

By Mr. Gault:

Q. Now, is it your view that so far as Woodstock is concerned, we were operating in this territory in June, 1935, on June 1, 1935?

A. Quite generally, yes. We were operating through this territory, as I just explained.

Q. Is there anything else you want to add on that?

A. I do not think I have anything else to add in connection with that.

Q. We will go—is there anything you want to add on Route No. 18?

A. No. There is nothing in particular there.

[fol. 167] Q. What about page 75, Route No. 19?

A. I just explained that, in connection with Sycamore.

Q. Of, yes.

A. I notice that Sycamore was omitted from that statement.

Q. What about 20?

A. Nothing on 20.

Q. 21?

A. No.

Q. How about 78? Have you anything there?

A. (No answer.)

Q. Those are all in the Chicago area, are they not?

A. What one is that?

Q. Route No. 22.

A. Route 22 is all in the Chicago area.

Q. Have you anything to add with reference to Route No. 23, Mr. Starr, which is on page 105?

A. No; nothing further than the exhibit shows.

Q. Mr. Starr, you know that freight is continuing to be handled right up to the present moment, as indicated in Exhibit No. 4 and elsewhere in this record?

A. Yes, sir.

Q. Is that correct?

A. Yes.

Mr. Gault: That is all I have on direct examination. You may cross-examine.

[fol. 168] Exam. Later: Is there any cross-examination?

Mr. Axelrod: I have one or two questions.

Cross-examination.

By Mr. Axelrod:

Q. Mr. Starr, are you generally acquainted with the various contractors your railroad does business with?

A. Yes, sir.

Q. Do you know whether or not they have filed applications with the Interstate Commerce Commission for any type of authority under the grandfather clause?

A. I understand from what they have told me that most of them have.

Q. Do you know, for instance, the kind of authority that has been filed for by Mr. Roehlke?

A. I do not know anything about what they have filed other than some of them have told me they have filed in accordance with the requirements of the Commission.

Mr. Gault: I think we will state for the record that we want to put all of our cards on the table here. In some cases we advised these people to file applications because the construction of the law is uncertain. We want everybody to be protected.

Mr. Axelrod: I assume all the contractors have filed applications with the Commission.

Mr. Gault: I could not say that. I could not admit that. I do not know.

[fol. 169] By Mr. Axelrod:

Q. Mr. Starr, do you know whether any contractor here present filed an application with the Interstate Commerce Commission?

A. I do not know of any that have, whether they actually have or have not.

Q. In any event, your claim is based upon their operations, is that right, the operations of the various contractors?

Mr. Gault: Just a moment, please, Mr. Axelrod.

Mr. Axelrod: Yes.

Mr. Gault: I would like to have the reporter read that question.

Exam. Later: Read the question.

(The question was read.)

Mr. Gault: I think that is a legal question, and not a question for the witness.

Exam. Later: Objection overruled.

The Witness: I do not know.

By Mr. Axelrod:

Q. Well, the fact is, is it not, that the only operations your company has actually conducted over these routes are by virtue of the contracts with various contractors, is that right?

A. That is correct.

Q. Your claim for grandfather authority is predicated simply upon the contractual arrangements?

Mr. Gault: Well, now, if the Examiner please—

[fol. 170] Exam. Later: I think he has answered that.

The Witness: I think I just answered that; I do not know.

By Mr. Axelrod:

Q. Do you know whether or not the various contractors handled any other freight other than the freight of your company at the same time?

A. I know of some cases where they have, yes, sir.

Q. That was quite general, is that right?

A. Yes, sir.

Q. I assume then that the charges assessed against your company by the various contractors were charges other than the various contractors' published rates, is that right?

A. (No answer.)

Q. That is, if the contractor was a common carrier and published a tariff rate, your arrangement with the contractor was at a rate other than the contractor's published rate?

A. Well, the rate that we paid would be shown in the contract.

Q. Yes.

A. It would be shown in the contract.

Q. Yes, but it would be other, and has been other than the carrier's actual published rate?

Mr. Gault: Do you know that, Mr. Starr?

The Witness: I do not know, because I have not interested myself to look into their charges or methods of operation, in so far as their own business was concerned.

[fol. 171] By Mr. Axelrod:

Q. Well, you know your own rate——

A. Yes.

Q. —with these contractors——

A. Yes.

Q. —do you not?

A. Yes.

Q. If for some reason or another your company should not be permitted to work with these contractors on the basis of your present rate arrangement, is it your intention to substitute other contractors?

A. I do not know that. We would have to cross that bridge when we come to it.

Q. Do you know whether or not the railroad company itself contemplates putting on its own trucks?

A. I do not know.

Q. You do not know that?

A. No.

Q. Has your attention ever been directed to the administrative ruling of the Commission which requires carriers who utilize the services of others, to enter into a contract of employment wherein the person performing that service would be considered as an agent for the carrier?

Mr. Galt: Just a moment. Answer the question "yes" or "no", Mr. Starr.

The Witness: I do not know.

[fol. 172] By Mr. Axelrod:

Q. That has never been called to your attention?

A. No, sir.

Mr. Axelrod: That is all. That is all I have.

Exam. Later: Is that all?

Mr. Cannon: I have some questions.

Exam. Later: Mr. Cannon.

By Mr. Cannon:

Q. Mr. Starr, you have been associated with and investigated the matter of transportation in the State of Wisconsin for some period of time—

A. Yes, sir.

Q. —have you not?

A. Yes, sir, and other states.

Q. You have attended many hearings in the State of Wisconsin?

A. Yes.

Q. You quite generally know the routes of the various common carriers operating in the State of Wisconsin?

A. Yes, sir.

Q. And you know the location of the various communities, especially as to railroad stations on your line?

A. As to stations on our own line, yes, sir.

Q. Were you instrumental in negotiating a contract with the Leicht Transfer & Storage Company of Green Bay?

A. Yes, sir.

Q. Such a contract was negotiated in 1934?

[fol. 173] A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Did that contract provide that Leicht Transfer & Storage Company could render service to no other shipper except the Chicago & North Western Railway Company?

A. No, sir.

Q. It did not?

A. No, sir.

Q. There was not an exclusive contract?

A. No, sir.

Q. Under that contract—

Mr. Gault: Wait a minute.

Mr. Cannon: What?

Mr. Gault: All right; go ahead. Pardon the interruption.

Mr. Cannon: That is all right.

By Mr. Cannon:

Q. Under that contract did you agree to lease any equipment?

A. No, sir.

Mr. Gault: Well, now, just a moment. I object to questioning the witnesses on conclusions as to the legal effect of that contract. The contract speaks for itself.

Exam. Later: I think that is the best evidence.

Mr. Gault: I move that the answer be stricken.

[fol. 174] Mr. Cannon: Which answer is that you are asking be stricken?

Exam. Later: Let the reporter read the last question and answer.

(The record was read.)

Exam. Later: I think the answer—Oh, the question is “did you agree”.

I think the answer may be stricken. I do not think he is qualified, so far. I do not think he has qualified himself so far,—you may do so,—to state what was in all of these contracts.

Mr. Cannon: I asked him about that, Mr. Examiner, and he said he negotiated the contract with Leicht Transfer & Storage Company. I think he is qualified to answer the question, and I think it is a proper question.

Mr. Gault: I object to asking a question of this witness which construes the legal effect of those contracts.

Mr. Cannon: It has nothing to do with the legal effect. I am asking whether they agreed to lease equipment.

Exam. Later: The contracts will speak for themselves. They are to be placed in evidence. We have a sample here in the record which you may refer to and ask him as to that particular contract.

Mr. Cannon: I assume I was referring to that particular contract. If I did not, I am sorry.

[fol. 175] Exam. Later: Off the record.

(Discussion outside the record.)

Exam. Later: Back on the record. I will sustain the motion to strike.

Mr. Cannon: The record shows that?

Exam. Later: Yes. It will be in the record.

Mr. Cannon: All right.

By Mr. Cannon:

Q. Mr. Starr, in negotiating this contract with Leicht Transfer & Storage Company, did you go into all of the details that would be necessary to carry out the contract in reference to operations in the territory?

A. I went into all of the operating details in connection with it.

Q. How the actual operation would be carried out both as to place and as to time?

A. As to schedule, yes.

Q. All right. Now, then, I refer you to page 52 of your exhibit, I believe, number 4.

Exam. Later: 52, was that?

Mr. Cannon: Yes.

The Witness: I do not have my pages numbered.

Mr. Gault: That is Route No. 11.

Mr. Cannon: Just refer to Exhibit No. 1.

The Witness: All right.

Mr. Cannon: We can probably work it out from that.

[fol. 176] The Witness: Wait a minute. I have this exhibit now.

Mr. Cannon: There is nothing in that exhibit except just the routes. Well, I will change the question.

By Mr. Cannon:

Q. I note that Route No. 11 is an operation between Sheboygan and Green Bay, Wisconsin, is that correct?

A. I would like to add, in that case—

Exam. Later: Just a moment, Mr. Starr.

The Witness: Yes.

Exam. Later: Answer the question first.

The Witness: I am sorry.

Exam. Later: First answer the question.

The Witness: Yes.

By Mr. Cannon:

Q. You entered into a contract with Leicht Transfer & Storage Company to render the service from Green Bay to Sheboygan, is that right?

A. Yes, sir.

Q. Is the Leicht Transfer & Storage Company rendering that service for the Chicago & North Western Railway Company with its vehicles at the present time.

Mr. Gault: Do you mean—

The Witness: We have a contract with them.

By Mr. Cannon:

Q. Is that service being performed with vehicles owned by the Leicht Transfer & Storage Company?

A. So far as I know, yes, sir.

Q. Do you know whether or not the Leicht Transfer & [fol. 177] Storage Company has interstate authority between Sheboygan and Green Bay as a common motor carrier under the Interstate Commerce Commission?

A. I understand they have interstate authority.

Q. All right. Now, I refer you to Route No. 12, which is an operation between Fond du lac and Green Bay.

A. Yes.

Q. What company is actually rendering that service?

A. Our contract is with the Leicht Company, and I understand that the service is actually being rendered or performed by the Northern Transportation Company.

Q. Do you know whether or not the Northern Transportation Company is a common motor carrier?

A. They are in the State of Wisconsin, authorized to operate over the highways they serve for us.

Q. The next one is Route No. 13, between Green Bay and Clintonville, Wisconsin.

A. Yes.

Q. Will you tell us who is actually rendering the service between Green Bay and Clintonville?

A. Terminal Truck Lines are actually handling the freight.

Q. Is that the same situation, in connection with Route No. 14? Is the same thing true with respect to Route No. 14 which is a route between Green Bay and Menominee, Michigan?

A. Yes, sir.

[fol. 178] Q. I will ask you if you know whether or not Terminal Truck Lines is a common carrier in the State of Wisconsin?

A. They are.

Q. Mr. Starr, do you have a contract between your railroad and the Northern Transportation Company for the rendering of service between Green Bay and De Pere?

A. Yes, sir.

Q. Is that part of what is known as Route No. 12, as you set it up in your Exhibit No. 1?

A. Yes, sir.

Q. Is that correct?

A. Yes.

Q. There is also a service being rendered between Green Bay and Wrightstown?

A. Yes.

Q. Is that correct?

A. Yes.

Q. That is also part of Route No. 12?

A. Yes, sir.

Q. Who is that service actually being performed by?

Mr. Gault: Just a moment. When you ask that question, do you mean, with whom is this contract?

Mr. Cannon: No. I am asking who is actually rendering the service under license.

The Witness: I do not know. It is under our contract [fol. 179] with Leicht, but I do not know who is actually handling it.

Q. Have you ever heard of the Wrightstown Transfer Company, and Mr. Vandenbosch?

A. Yes.

Q. Do you know whether or not he is rendering that service?

A. I do not positively, no.

Q. You have seen him pull up to your depots?

A. That is correct.

Q. Do you know whether or not of your own knowledge other merchandise is being transported on these vehicles handling your merchandise over these routes, Routes 11 to 14, inclusive?

A. Yes, sir, I know it is.

Exam. Later: Just a moment, please. Mr. Reporter, read that last question, please.

(The question was read.)

Exam. Later: That is, merchandise other than that of the North Western?

Mr. Cannon: Yes; other than that of the applicant here.

Exam. Later: All right. Go ahead.

By Mr. Cannon:

Q. And that condition has existed since entering into the original contract in 1934?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Do you know whether or not the Northern Transportation [fol. 186] Company was rendering a common motor carrier service between Green Bay and Fond du Lac, prior to 1934?

A. I know they were.

Q. You know they were?

A. Yes.

Q. Do you know whether or not the Terminal Truck Lines was rendering a common motor carrier service between Green Bay and Clintonville?

A. Yes.

Q. Prior to 1934?

A. Yes.

Q. Is the same also true of the Terminal Truck Lines between Green Bay and Menominee—

A. Yes.

Q. —or Marinette?

A. Yes.

Q. Prior to that time?

A. Yes.

Q. Is the same thing also true of Leicht Transfer & Storage Company between Green Bay and Sheboygan?

A. I do not know that definitely.

Q. You do not know that?

A. I do not know that definitely because I never checked that particular operation.

Q. You do not know whether they made application at [fol. 181] the time of the contract or not?

A. No.

Q. Or had rights before that time?

A. I do not know that right now.

Mr. Cannon: I believe that is all.

Exam. Later: Is there anything further?

Mr. Shields: Yes.

By Mr. Shields:

Q. Referring back to the contracts, Mr. Starr, do they in each case reveal the date operations started?

A. Why, they may be supplemented for some reason. For instance, I explained about the McRae one between Hurley and Ironwood, because McRae, Senior, died, and the son took over the operation.

Q. I understand that.

A. In that case the contract would show as to the date we actually entered into it with the younger McRae, but the operation was really in effect several years before that in the name of his father.

Q. You had a previous contract with his father?

A. Oh, yes.

Q. Is that correct?

A. Yes.

Q. With reference to all operations prior to June 1, 1935, there is a contract in existence?

A. Yes.

[fol. 182] Q. Showing the date that the operations started?

A. Everything shown on Exhibit 1 is covered by contracts prior to June 1, 1935.

Q. That date will be shown on the contract?

A. I presume it will. I do not know just what—

Exam. Later: It does not necessarily follow that the date of operations, being started and the date of the contract would be the same.

The Witness: No, sir, it does not, because supplements or re-issues may change the identification of the contract—

Exam. Later: No.

The Witness: —but not the identification of the operation as it existed prior.

Exam. Later: You misunderstood me there. By that I meant that they may sign a contract with you today and it may be several days before they would actually start to operate under that contract.

By Exam. Later:

Q. Is that correct, or is the opposite true?

A. No, sir. It has been our practice to sign the contract as of the date the operation starts.

Exam. Later: All right. Thank you for informing me. Go ahead, Mr. Shields. Pardon me for interrupting.

By Mr. Shields:

Q. Do you happen to know of your own knowledge whether or not the contractors—whether there are any contractors with which you have contracts that are not common [fol. 183] carriers?

A. (No answer.)

Q. Do you happen to know that?

A. I really do not know. I think there are some of the smaller ones who are not common carriers, but I am not sure of that.

Q. Do you have any contractors whose entire motor vehicle operations are confined to your work?

A. None, as shown in this case.

Mr. Gault: Just a minute—if I may interrupt: Do you mean by that—

Mr. Shields: I do not think he understood my question.

Exam. Later: Read the question.

(The question was read.)

Mr. Gault: Was your question referring to those that are in evidence here or to our operations generally? By that, I mean operations outside of this application.

Exam. Later: The answer is confined to right here.

Mr. Shields: I am dealing only with what is involved in the application.

Mr. Gault: All right.

Exam. Later: Proceed.

By Mr. Shields:

Q. You are acquainted with how the shipments are actually handled, that is, the transferring of the shipments from your own custody to the custody of the contractor? [fol. 184] A. Yes.

Q. Who loads it into the truck?

A. As a general thing it is done by the employes of the station, as well as the contractor. They help each other.

Q. What sort of records are maintained to show that transaction?

A. There is a manifest issued which is an abstracted copy of the waybill reference, weight, and so forth, listing each shipment the contractor is to take from the station.

The Contractor's driver signs the manifest and proceeds with the freight. Then when he gets to our destination, or the agent who he will give the freight back to, the agent signs the manifest which exonerates the contractor from any hold on the freight. That proves he has given it back to the railroad company.

Q. I assume there are two copies furnished to the contractor, is that correct?

A. One for the destination agent to retain.

Q. Yes.

A. And one for the contractor to retain.

Q. Are there any seals used?

A. In some instances, yes.

Q. Explain in what instances seals are used?

A. To illustrate, a truck would be loaded at Proviso tonight and completed about ten o'clock for territory Barrington to Woodstock. That truck would be sealed tonight and the seal broken at Barrington which would be the first stop for unloading.

Then it would not be resealed after that. The driver would be responsible for his load.

Q. Who places the seal on the truck?

A. The railroad company.

Q. Who first opens—who first breaks the seal?

A. The railroad company.

Q. Who keeps the seal record?

A. The railroad agent.

Q. Who is responsible for the freight while it is under seal?

A. Well, I presume under that circumstance the railroad company would be. In a case of that kind it would be settled by the claim department representative with the contractor, but the purpose of the seal is to protect the load until it gets to its break bulk point.

Mr. Gault: Just a moment.

By Mr. Gault:

Q. Mr. Starr, the railway company is responsible for the shipment—

A. At all times.

Q. —at all times—

A. Yes.

Q. —is it not?

A. At all times, yes.

[fol. 186] Mr. Gault: Pardon me for the interruption.

By Mr. Shields:

Q. Would there be any other freight likely to be in that truck other than railroad shipments when the seal is placed on the truck?

A. In the case I just explained, it would be only railroad freight.

Q. Only railroad freight?

A. Yes.

Q. Are there any cases when seals are used where there would be other merchandise other than railroad shipments?

A. Not that I know of.

Q. Referring now to the operation involving 23 routes, can you point out on what routes you sealed the trucks?

A. Only in the going direction on routes 17 to 21, inclusive, and 23.

Q. Just a moment, now. Let me get that again.

A. In the going direction, on Routes 17 to 21, inclusive.

Q. Yes.

A. And 23.

Q. Well, Mr. Starr, are we to understand by that, that you use seals on a one way movement only?

A. Yes.

Q. Between what points on Route No. 17, Proviso to Woodstock?

A. Between the first point and the point at which the truck would open the following morning. If it were a [fol. 187] straight load to Woodstock, then the seal would stay on until it got to Woodstock.

If it started to peddle it at Des Plaines, the seal would be broken at Des Plaines, but would not be re-sealed en route to Woodstock. It is merely an overnight protection while the equipment is loaded, say, from about 10 o'clock at night until 5 o'clock the following morning.

Q. You use no seals during the day time, in other words?

A. Very very rarely.

Q. Your purpose in using seals, then, as I understand it, is to provide a means of protection, and not that you are wanting to establish that it is under your own jurisdiction?

A. Merely for protection.

Exam. Later: Is that all?

Mr. Shields: Yes.

Exam. Later: Are there any further questions of the witness?

Mr. Munsert: Just a moment.

By Mr. Munsert:

Q. Mr. Starr, these shipments are being moved in these units owned and operated and manned by the contractors, the truck owners?

A. Well, they are furnished by them. As to the ownership, I do not know.

Q. They are not railroad owned, in any event?

A. No, sir.

[fol. 188] Q. Is that correct?

A. Yes; sir.

Q. Does the railroad name or identity appear any place?

A. No, sir, not that I know of.

Q. Well, is it not a fact—strike that.

In effect, there is no holding out by the railroad company to perform transportation by motor vehicle between these points, is there, Mr. Starr?

Mr. Gault: I object to that as calling for a conclusion of the witness.

Exam. Later: Read the question.

(The question was read.)

Mr. Shields: That is predicated on the previous question.

Exam. Later: Read the previous question.

(The question was read.)

Exam. Later: Objection sustained.

By Mr. Munsert:

Q. You also testified that along with your merchandise

on these trucks, is other merchandise being hauled by these contractors under their own rights possibly?

A. I testified that in some cases I knew this to be a fact, but I did not know it in all cases.

Q. In some cases?

A. Yes.

Q. It is a fact in some cases?

[fol. 189] A. In some cases I know it to be a fact.

Q. In most cases they have rights in their own names covering the operations they are performing, which are covered by proper application?

A. Well; I answered that before. I know of certain ones that have applied. As to what rights they have, I have never definitely heard.

Q. Those contractors, then, in so far as they are exercising their own rights, may be out soliciting business between the same points you are seeking authority to cover here?

A. So far as I know, I would not know anything about their private business other than what I might actually see in making a trip on one of their trucks and checking what they are handling.

Q. There is nothing exclusive about it?

A. No.

Q. They can carry under their own certificates?

A. We haven't ever asked them—or, prevented them from doing that.

Q. You do not as a railroad solicit that sort of business, do you?

A. Sir?

Q. You do not as a railroad solicit that sort of business, do you?

A. I do not understand you.

[fol. 190] Q. For movement by these trucks?

A. I do not understand.

Exam. Later: I do not think the witness is qualified to answer that question—

Mr. Munsert: Mr. Examiner—

Exam. Later: —as to solicitation of business by the railroad.

Mr. Munsert: If the Examiner please, he is their operating man and presumably knows all about this operation. Whether they are soliciting business generally between these points, or whether it is merely stuff going through

their own freight house in the ordinary course of business, I think is material.

Mr. Gault: This witness is an operating witness and knows all about this operation. The operating department transports freight which is offered by the public, obtained by solicitation or otherwise.

Exam. Later: Is the operating department engaged in solicitation?

Mr. Gault: It is not, no.

Exam. Later: I did not think it was. I do not believe this witness is qualified to answer the question.

Mr. Munsert: Perhaps counsel would care to answer it. Do you care to answer the question, Mr. Gault?

Mr. Gault: I do not know as I understand your question. What is it you want to know? I will try to answer it if I [fol. 191] can, if it will throw any light on this matter.

Mr. Munsert: Have the reporter read the question.

Exam. Later: Read the question, Mr. Reporter.

(The question was read.)

Mr. Shields: I do not believe the attorney is in any more of a position to answer that question than this witness. I personally want the witness to answer it.

Mr. Cannon: I wonder if I can ask the witness two or three questions, and perhaps we can clear this thing up.

Exam. Later: Just a minute. Do you want to answer his question, Mr. Gault?

Mr. Gault: I think the question is rather an indefinite question. Mr. Gregory will give you some information on that, if you want to have it.

Mr. Gregory: I will answer you on that.

Mr. Munsert: All right.

Mr. Gregory: I have solicited freight for movement in these operations. I am connected with the traffic department, and when we solicited freight we solicited freight on the schedule.

We did not indicate it is going to move by truck. For example, if we were at Fond du Lac going to solicit freight moving through Green Bay to the Twin Cities, we would tell them what our service was from Fond du Lac to the Twin Cities; it would move in this motor carrier operation to [fol. 192] Green Bay, be consolidated into a car at Green Bay and go to the Twin Cities and be there the next morning.

Mr. Munsert: Is the customer aware of that particular movement?

Mr. Gregory: He is aware of the service. It moves under rail-rates. He does not know how it gets there.

Mr. Munsert: Is he aware of the fact you are offering to transport that merchandise by truck from the points covered in your application.

Mr. Gregory: I think in a good many cases he is.

Mr. Munsert: Do you tell him it will move that way?

Mr. Gregory: In a good many cases we have told them, yes.

Mr. Munsert: So, to that extent you are in competition with this carrier who may be operating under his own rights, incidental to your contract with him?

Exam. Later: Well, Mr. Munsert—

Mr. Gregory: No, because he would not be handling this freight on railroad billing. We are soliciting freight on railroad billing.

Exam. Later: I think that will be sufficient along that line. Whether he is in competition or not does not make any difference.

Mr. Munsert: It will make a difference to this motor carrier operation.

Exam. Later: Let us proceed, gentlemen.

[fol. 193] Mr. Shields: Let me ask this:

By Mr. Shields:

Q. Do you take any steps to determine the safe operation of the motor carrier, whether it is a safe vehicle or not?

A. Only in so far as it is proper to protect our freight.

Q. Do you investigate the drivers to any extent?

A. No, sir.

Q. Do you know what hours the driver might work?

A. No, sir.

Q. You do not know about that?

Mr. Shields: That is all.

Exam. Later: Are there any further questions of this witness?

Mr. Cannon: I have just one or two questions more, Mr. Examiner.

Exam. Later: Go ahead, Mr. Cannon.

By Mr. Cannon:

Q. Mr. Starr, referring now to routes 11 to 14, which are the Northern Terminal and Leicht routes, do you also handle intrastate freight on those routes by motor carrier?

A. To a small extent, yes, sir.

Q. Have you, as far as your knowledge is concerned—that is, has your company made any application to the Public Service Commission of Wisconsin for an intrastate certificate as a common carrier?

[fol. 194] Do you know whether your company has made any such application, as far as your knowledge goes?

A. Well, in connection with this case?

Q. Have you made application for an intrastate certificate as a common motor carrier in Wisconsin for any routes, as far as you know?

A. I do not know. I would say I do not think so, but I do not know.

Q. You do not think so, but you do not know?

A. No.

Mr. Cannon: That is all.

Mr. Gault: I have one or two questions—

Exam. Later: I wonder if I might ask him—

Mr. Gault: Certainly.

Exam. Later: Go ahead, Mr. Gault and finish up. Perhaps you will ask them for me.

Mr. Gault: I just have one or two questions.

Exam. Later: Proceed.

Redirect examination.

By Mr. Gault:

Q. Mr. Starr, with reference to the matter of claims for loss or damage, the only one the shipper looks to is the railroad, is that right?

A. That is correct.

Q. So far as accounting is concerned, all matters are handled in the railroad accounts as though it were a rail shipment?

[fol. 195] A. Yes.

Q. Is that a fact?

A. Yes, sir.

Q. You know enough about accounting to know that this applies to the settling with other railroads that handle interline railroad accounts?

A. Yes.

Q. I do not think we said quite enough about Woodstock. Why did you start that operation to Woodstock?

What was the particular need for that?

A. Well, it fitted in with the—the extension fitted in with the other operation. We improved our service on important out-freight from there by giving Woodstock the same night departure on certain freight that they had had following night departure on under the other arrangement, whereby we brought it in by car over night.

Q. You saved time, did you?

A. We saved time.

Q. Has that service been satisfactory to the shipping public?

A. Yes.

Q. As far as you are aware?

A. It has been satisfactory to the patrons at Woodstock.

Q. All right.

A. In fact, they were responsible for it. We went as far as Crystal Lake, and they were so close they thought they [fol. 196] should be included.

Q. Did they ask you to extend it?

A. Yes. Several of them asked me from time to time.

Q. As a result of that, you have instituted that operation?

A. Yes.

Mr. Shields: Mr. Examiner, I am wondering if it is clear that my objection this morning continues on through, with respect to testimony regarding convenience and necessity?

Mr. Gault: It is perfectly clear to me.

Mr. Shields: All right.

Mr. Gault: I think that is all.

Exam. Later: It will be so understood.

Mr. Shields: Very well.

Exam. Later: Do you have any further questions of the witness, Mr. Gault?

Mr. Gault: I think not, no.

Exam. Later: Let me ask you this question, Mr. Gault, rather than the witness:

You stated that between Proviso and West Chicago, Illinois, you are providing this service. Both of these towns—no; it is not West Chicago.

Mr. Gregory: Proviso and Chicago.

Exam. Later: Proviso and Chicago.

Mr. Gregory: That is right.

Exam. Later: What page is that on?

[fol. 197] Mr. Gregory: Route 22, page 78.

Exam. Later: What page?

Mr. Gregory: Page 78.

Exam. Later: Yes. That is it. I asked Mr. Gregory certain questions with respect to whether this would provide through service by motor vehicle, that never once got on any train. That operation would be solely within the municipal—or, within the commercial zone of Chicago.

Mr. Gault: That is correct.

Exam. Later: And unless there was a movement without that zone under a common arrangement, it would not be subject to the Act.

I am wondering if you are going to stipulate, or if you want to have it understood that all shipments that will be handled, will be handled in movement beyond by rail?

Mr. Cannon: Before they answer you, Mr. Examiner, I would like to call attention to the fact that you are placing emphasis on the fact it is Chicago. I think Mr. Gregory testified that shipments from Ford du Lac and Green Bay could move by truck, and the entire service by truck, and it might not go beyond by rail, with respect to that.

Exam. Later: That is true with respect to that.

Mr. Cannon: I was wondering if you are making a distinction?

Exam. Later: I am, because this is the commercial zone. [fol. 198] What would your conclusion be with respect to that, Mr. Gault?

Mr. Gault: Just a moment. Off the record.

Exam. Later: Off the record.

(A discussion outside the record.)

Exam. Later: Back on the record.

Mr. Gault: It might go all the way to DeKalb, but at rail rates; it might go by truck.

Exam. Later: If you moved it in from Proviso, into Chicago, it would require a further movement outside of the commercial zone before it would be subject to the Act.

Now, is it your intention to have this certificate apply, in so far as Proviso to Chicago is concerned, on traffic destined beyond Chicago?

Mr. Gault: Well, we intend to have the certificate apply in so far as it may be necessary under the Act.

Of course, in so far as traffic is not involved under the Act, we would not need it.

Exam. Later: You have included it here; in the written report I do not want to go into a long discussion on that point if it is not necessary.

Mr. Gault: Just a minute. I think it would probably be a better idea and be more informative to have Mr. Starr explain just how some of those shipments are handled.

Exam. Later: All right.

Mr. Gault: Then perhaps we can make a positive answer. [fol. 199] Exam. Later: All right.

The Witness: Merchandise generally handled between Proviso and Chicago is so-called Chicago delivery and Chicago pick-up freight.

A shipment arrives at Proviso being consigned in the down town area of Chicago. It is handled by motor vehicle all the way to the consignee from Proviso. Further, we handle merchandise from Proviso, particularly perishable freight, and other non-perishable freight, to one or two of the connecting railroads direct from Proviso to the freight station of the outbound carrier.

There may be a shipment of butter arriving at Proviso for Detroit at noon today, a car on our own railroad. That shipment of butter will be loaded into a truck and taken directly to the Michigan Central Railroad who in turn will put it in a car for Detroit.

Exam. Later: To get my point clear, let me ask you this:

By Exam. Later:

Q. In other words, with reference to this particular Route No. 22, it will either have a haul by rail, or some other means of transportation, rail or motor carrier before it gets to Proviso; then it will move from Proviso, within the municipal area, but it will either have one or the other, that is, a movement by rail or motor carrier afterward, or one before?

A. That is correct, with very few exceptions.

[fol. 200] Q. I see.

A. I might illustrate that exception for you.

Q. Do so.

A. That happened within the last ten days. There was a shipment at our Chicago station for Aurora, Illinois, and

the customer was very anxious to have it, so we had one of the trucks take it from the Chicago station direct to Aurora.

Q. But it had come in by rail, into your Chicago station, had it not?

A. In this case it had been turned over to us by the Pennsylvania Railroad at Chicago, but the same kind of shipment could have been turned over by a Chicago shipper, and have been so handled, and in that case it would not have been transported at all by rail.

Exam. Later: All right. I think that is clear.

The Witness: Those cases are very rare, Mr. Examiner.

Exam. Later: It is understood, of course, that any certificate would apply only on shipments that moved either into the municipal area from without, or without the municipal area from within?

The Witness: That is correct.

Exam. Later: There is one other question with reference to the selection of these truckers who have been hauling your freight.

By Exam. Later:

Q. State what you did in selecting them, what investigation [fol. 201] you made of these truckers.

A. (No answer.)

Q. As a suggestion, was it that you went and tried to get the best men in the community who were in the trucking business to handle your stuff?

A. I would say the principal thing we were looking for was the best prices.

Q. That was the proposition?

A. Yes. We wanted the best price. In fact, we got bids from more than one, usually, and if all other points were equal, we took the most favorable price, or the least cost to our company.

Q. Was there any consideration given to the standing of that trucker in the community?

A. Yes. We were naturally interested in getting a good reliable man who was thought well of by the people he did business with, particularly in view of the fact that many of them would be our customers, as well as his.

Q. I see. However, you usually selected an established trucking concern; you usually selected him to be the one to haul your freight?

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. You did not go out and promote trucking companies? [fol. 202] A. No.

Q. Or get men to buy trucks to do this?

A. No, sir, not in any case.

Q. That is the point I had in mind.

A. No, sir. We did not do that in any case.

Q. For example, in hauling a load of freight from Sheboygan to Green Bay, you would turn over to that trucker a load of commodities which was worth, we will say, \$2,000, but between Sheboygan and Green Bay he burned it up. Would he be held responsible to you, or would you collect from him for destroying that load?

A. That load is covered by insurance.

Q. Who carries the insurance?

A. We do.

Q. You carry insurance on it?

A. Yes.

Q. Does the trucker?

A. We carry insurance to protect our own interest.

Q. Yes.

A. I understand the trucker also carries insurance to protect his.

Q. Who pays for that insurance?

A. Well, that is something that is hard to say. We deduct it on a percentage basis out of each payment to the—

Q. To the trucker?

[fol. 203] A. Yes.

Q. In other words, the trucker pays for insurance, and you get insurance to protect him?

A. (No answer.)

Q. Is that correct?

A. (No answer.)

Q. If not, state just exactly what are the facts.

A. I would say that in my opinion you are correct in that. The trucker actually pays for the insurance because of the fact we deduct it when we make our payment for the service he is rendering.

Q. Now, with respect to his drivers, do you have any right to hire and fire the drivers?

A. No, sir.

Q. You do not?

A. No.

Q. Do you select the routes the man is to operate over? Do you tell him when he leaves to take a certain route and follow that?

A. There are generally established routes which they would naturally follow in accordance with the setup of the schedule.

However, so far as cutting across with an empty to pick up a load, we would not dictate any routes to him.

Q. Do you dictate as a matter of fact—do you tell them when they start out, or give them any documents saying [fol. 204] “You will follow route so-and-so”?

A. No. We give them documents to take our freight from a set point to a set point.

Q. In other words, the thing you want of this trucker is to get your freight from A to B?

A. That is correct.

Q. You want it to be transported safely, if possible?

A. Safely.

Q. And expeditiously?

A. Promptly.

Q. Is that correct?

A. Yes.

Mr. Gault: That is right.

The Witness: Naturally, the routes used are the most direct between the stations.

Exam. Later: That is right.

By Exam. Later:

Q. Do you carry compensation insurance on these drivers?

A. No, sir.

Q. Do you pay social security?

A. No, sir.

Q. Railroad retirement?

A. No, sir.

Q. Or any unemployment insurance?

A. No, sir.

[fol. 205] Exam. Later: I think that is all. Does any one have any further questions of the witness?

Mr. Axelrod: May I ask one question?

Exam. Later: I would like to have you shorten it as much as possible, now.

Mr. Axelrod: I just have one question.

By Mr. Axelrod:

Q. Under the contract in question do the various contractors perform store-door delivery service to consignees?

A. No. This is a station to station operation. These are all station to station operations, and any terminal service beyond is handled as such.

In some instances, I believe our contractors that are doing road haul work also do some delivery work, but it is covered by another agreement entirely.

Mr. Axelrod: That is all. Thank you.

Mr. Gault: Let me ask one question in that connection.

By Mr. Gault:

Q. Mr. Starr, with reference to pick-up and delivery we have contracts with a large number, as a rule, of carters, or truckers, is that not a fact?

A. Yes. I think we have some 350 in Chicago.

By Mr. Cannon:

Q. Mr. Starr, were the railroads on June 1, 1935, rendering pick-up and delivery service?

A. No. That tariff became effective on January 20th, 1936.

Q. Have you enlarged the service to be rendered by any [fol. 206] of these contractors, especially those contractors on Routes 11 to 14, in reference to pick-up and delivery service as compared to terminal service, since the original contracts?

A. Not in accordance with the road haul freight they handle. That is all station to station.

Mr. Cannon: That is all.

Exam. Later: Is that all, Mr. Cannon?

Mr. Cannon: Yes.

Mr. Gregory: Mr. Examiner, I promised to give you the date on which that clause was first published, as shown in Exhibit No. 5.

Exam. Later: Yes. Do you have that information now, Mr. Gregory?

Mr. Gregory: Yes. I telephoned the office and obtained that information, Mr. Examiner.

Exam. Later: What was that date, Mr. Gregory?

Mr. Gregory: April 1, 1936.

Exam. Later: 1936?

Mr. Gregory: Yes, sir. That was the first date that clause was published in any tariff.

Mr. Gault: That has been carried forward since that time?

Mr. Gregory: Yes.

Mr. Gault: With that statement, we offer in evidence, if the Examiner please, Exhibit No. 5.

Exam. Later: Is there any objection to the introduction [fol. 207] of Applicant's Exhibit 5?

Mr. Cannon: With that statement, I again renew my objection to the introduction of Applicant's Exhibit No. 5, the date of it being subsequent to June 1, 1935.

Exam. Later: I am going to overrule the objection. It may be received in evidence.

(Applicant's Exhibit 5 received in evidence.)

Exam. Later: How about Exhibit No. 6?

(No response.)

Exam. Later: It will be admitted under the circumstances, it being a representative form of contract.

(Applicant's Exhibit 6 received in evidence.)

Exam. Later: Are there any further questions of this witness, gentlemen?

(No response.)

Exam. Later: You may be excused.

(Witness excused.)

Exam. Later: Have you anything further to offer on behalf of applicant, Mr. Gault?

Mr. Gault: Applicant rests, if the Examiner please.

Exam. Later: Off the record.

(Discussion outside the record.)

Exam. Later: We will take a short recess.

(A short recess was taken.)

Exam. Later: Come to order, please, gentlemen. Are [fol. 208] protestants ready to proceed?

Mr. Cannon: Yes.

Exam. Later: You may call your first witness, Mr. Cannon.

Mr. Cannon: Mr. Leicht.

Exam. Later: Be sworn, please, Mr. Leicht.

FRED L. LEICHT was sworn and testified as follows:

Direct examination.

By Mr. Cannon:

Q. State your full name for the record, please, Mr. Leicht.

A. Fred L. Leicht.

Q. Your address?

A. Green Bay, Wisconsin.

Q. What is your occupation, Mr. Leicht?

A. I am secretary and general manager of the Northern Transportation Company.

Q. Mr. Leicht, so there will be no confusion on the record, I wonder if you would state your various capacities and interests in the Northern Transportation Company, Terminal Truck Lines and Leicht Transfer & Storage Company?

A. I am president of Leicht Transfer & Storage Company; president of Terminal Truck Lines; and secretary and general manager of the Northern Transportation Company.

Q. Do you have a financial interest in each one of those companies?

[fol. 209] A. Yes, sir, I do.

Q. What per cent is your financial interest in the Leicht Transfer & Storage Company?

A. I own 166 shares of stock out of 880 shares.

Q. What is your interest in the Terminal Truck Lines?

A. I own 60 shares out of 108.

Q. What is your interest in the Northern Transportation Company?

A. I own 113 out of 2,500—just a minute. That is an error. May I correct that, please.

Q. Yes.

A. No; that is correct; 113 out of 2,500.

Q. How long have you been associated with the Northern Transportation Company?

A. As general manager since 1919.

Q. How long have you managed and acted as president of Terminal Truck Lines?

A. Since 1930.

Q. Was that the inception of Terminal Truck Lines?

A. That is correct.

Q. Are you in any way active in the management of the Leicht Transfer & Storage Company?

A. Only as an officer.

Q. And a stockholder?

A. That is right.

[fol. 210] Q. And director?

A. That is right.

Q. You do not actively spend your time in the management of Leicht Transfer & Storage Company?

A. I do not.

Q. Your time is either spent with the Northern Transportation Company or Terminal Truck Lines?

A. Yes.

Q. Is that correct?

A. It is equally divided.

Q. Is Northern Transportation Company a common motor carrier?

A. It is.

Q. Is it licensed to do business as a common carrier in intrastate commerce by the Public Service Commission of Wisconsin?

A. It is.

Q. Has it made application to the Interstate Commerce Commission for a certificate as a common motor carrier interstate?

A. It has.

Q. Has it received any evidence from the Interstate Commerce Commission?

A. Yes. A certificate has been granted, pending the thirty day period for objections.

Q. Is Terminal Truck Lines an intrastate common motor carrier in the State of Wisconsin?

[fol. 211] A. It is.

Q. Authorized by the Public Service Commission?

A. That right.

Q. Has it made application to the Interstate Commerce Commission for a certificate as a common motor carrier interstate?

A. It has.

Q. Has it received any evidence from the Interstate Commerce Commission?

A. I have not heard of any action on the Terminal Truck Lines.

Q. Your informal conference has been held on that?

A. That is correct.

Q. Is the Leicht Transfer & Storage Company both a contract and common motor carrier, that is, interstate?

A. Yes.

Q. Have you made application as such, and is your common motor carrier application an application from Green Bay to Sheboygan?

A. Including Manitowoc and Two Rivers.

Q. Have they requested authority to operate as an intrastate common motor carrier from the Public Service Commission of Wisconsin, that is, a certificate that they may operate over these routes?

A. Yes. They hold such intrastate certificate from the Public Service Commission of Wisconsin.

Q. Was that application made at or about the time the [fol. 212] contract was entered into with the Leicht Transfer & Storage Company and the North Western Railway Company?

A. It was made at that time.

Q. And granted by the Commission at that time?

A. That is correct.

Q. Do you know whether or not of your own knowledge Leicht Transfer & Storage Company entered into a contract with the Chicago & North Western Railway Company to render a certain service over routes set out in Exhibit No. 1, Nos. 11 to 14, inclusive?

A. It did.

Q. Are you aware of the terms of that contract?

A. Quite aware, yes.

Q. Under the terms of that contract, did that provide that the Leicht Transfer & Storage Company would render exclusive service for the Chicago & North Western Railway Company?

A. It did not.

Q. I note in their Exhibit No. 1 they state that the service—so you may have it before you—they state that the service started between Sheboygan and Green Bay on June 25, 1934.

Do you know whether or not that is true?

A. It is approximately correct.

Q. Yes.

A. I would not be able to say it was the exact date.

Q. Who actually rendered that service?

[fol. 213] A. Leicht Transfer & Storage Company.

Q. I note on the exhibit, the same exhibit, that the next route—strike that.

I notice on the same exhibit that the route between Fond du Lac and Green Bay started on June 25th, 1934. Who actually rendered that service?

Mr. Gault: I object to the form of that question. It calls for a conclusion of the witness.

If he will ask what the Storage Company did, I think that is proper.

Exam. Later: Read the question, please, Mr. Reporter.

(The question was read.)

Mr. Gault: The question is, what service?

Mr. Cannon: The service of transporting freight for the Chicago & North Western Railway Company between Green Bay and Fond du Lac.

Mr. Gault: Well, if you will limit it—

Exam. Later: As of what date?

Mr. Cannon: As of the date in the question, June 25th, 1934.

Mr. Gault: If you will limit it to the service of transporting for the Chicago & North Western Railway Company, I have no objection to the question.

Mr. Cannon: Well, Mr. Gault—

Exam. Later: I think I would reframe the question, Mr. Cannon.

[fol. 214] Mr. Cannon: I will be glad to.

By Mr. Cannon:

Q. I note that Exhibit No. 1 states that service was commenced between Fond du Lac and Green Bay, the transporting of freight by the Chicago & North Western Railway Company, on June 25, 1934.

Who actually rendered the service on that date?

Mr. Gault: I object to that. The same objection. The question is about the same as it was before.

Exam. Later: I am going to let him answer that one.

The Witness: It was rendered by the Northern Transportation Company.

By Mr. Cannon:

Q. I will ask you the same question with reference to Route No. 13, which is a route from Green Bay to Clintonville, starting on the 25th day of March, 1933?

A. The original route was only from Green Bay to Shawano. That was performed by the Terminal Truck Lines. Clintonville was added at a later date.

Q. Who rendered the service into Clintonville at a later date, when it was added?

A. Terminal Truck Lines.

Q. That date was prior to June 1, 1935?

A. I believe it was.

Q. I will ask you in reference to Route No. 14, which is a route between Green Bay and Menominee, Michigan, started on June 25th, 1934, who actually rendered that service?

[fol. 215] A. Terminal Truck Lines.

Q. I assume you were consulted when the Leicht Transfer & Storage Company entered into this contract with the Chicago & North Western Railway Company?

A. At the time the contract was entered into, I was vice president of Leicht Transfer & Storage Company, and was one of the signers of the contract.

Q. Was there a discussion about how the contract would be carried out?

A. Yes.

Mr. Gault: Just a minute.

Mr. Cannon: I only asked if there was a discussion about it.

Mr. Gault: Well, all right.

The Witness: Yes, there was.

By Mr. Cannon:

Q. And the service was rendered under the contract, as you have stated?

A. That is correct.

Q. Now, we will take the Northern Transportation Company.

A. All right.

Five Hundred Dollars* (\$500) presented with the petition be and the same is hereby approved and ordered filed herein.

Enter: Philip L. Sullivan, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Dated April 15, 1943.

[fols. 386-402] Supersedeas bond on appeal for \$500.00 approved and filed April 15, 1943, omitted in printing.

[fol. 403] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO PORTIONS OF RECORD TO BE INCLUDED IN THE TRANSCRIPT ON APPEAL—Filed April 19, 1943

Pursuant to paragraph 2 of Rule 10 of the Rules of the Supreme Court of the United States, it is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective attorneys, that the transcript of record to be filed in the Supreme Court of the United States pursuant to appeal heretofore allowed herein shall consist of the following:

- (1) Placita.
- (2) Plaintiff's complaint for equitable relief, including attached exhibits numbered 1 to 3, inclusive.
- (3) Answer of Interstate Commerce Commission.
- (4) Answer of United States of America.
- (5) Order entered by the Court on January 21, 1943, setting hearing on motion for interlocutory injunction January 28, 1943, before a three-judge court.
- (6) Transcript of proceedings before a special three-judge district court on January 28, 1943.
- [fol. 404] (7) Plaintiff's exhibits numbered 1, 1-A, and 2, received in evidence at the trial before said Court.
- (8) Stipulation executed under date of February 3, 1943, by counsel for plaintiff and defendants relating to attached copy of application and to Exhibit No. 3 attached to the complaint and Exhibit No. 6 in the proceeding before the Interstate Commerce Commission and included as a part of Exhibit 1-A and relating to other contracts referred to in the stipulation.

(9) Findings of fact and conclusions of law and judgment entered March 19, 1943, dismissing complaint.

(10) Notice and motion filed March 29, 1943, for order amending and supplementing the Court's findings and conclusions and judgment and order of March 19, 1943, so as to provide for stay of enforcement of the Commission's order of November 26, 1941, in its Docket MC 42614 and enforcement of the Court's order and judgment of March 19, 1943, pending appeal to and determination by the Supreme Court of the United States, and order of Court thereon entered March 29, 1943, granting said stay.

(11) Plaintiff's petition for appeal to the Supreme Court of the United States; assignment of errors, and prayer for reversal.

(12) Order of Court allowing appeal and approving appeal and supersedeas bond.

(13) Citation on appeal.

(14) Plaintiff's appeal and supersedeas bond.

(15) Plaintiff's jurisdictional statement required by paragraph 1, Rule 12 of the Rules of the Supreme Court of the United States.

(16) Plaintiff's statement directing appellees' attention to provisions of paragraph 3 of Rule 12, of the Rules of the Supreme Court of the United States.

[fol. 405] (17) Proof of service of copies of petition for and order allowing appeal, assignment of errors, prayer for reversal, jurisdictional statement required by paragraph 1 of said Rule 12, statement directing attention to provisions of paragraph 3 of said Rule 12, and citation.

(18) Any statement filed by appellees disclosing any matter or ground making against the jurisdiction of the Supreme Court of the United States, and any motions by appellees to dismiss or affirm, and any statement or filing on behalf of plaintiff-appellant in opposition thereto.

(19) This stipulation.

(20) Certificate of the Clerk of the district court to the transcript of record.

Edward Dumbauld, Special Assistant to Attorney General, Attorney for United States of America.

Allen Crenshaw, Attorneys for Interstate Commerce Commission. Nye F. Morehouse, P. F.

Gault, Attorneys for Plaintiff-Appellant.

Dated April 17, 1943.

[fol. 406] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 407] Citation in usual form showing service on counsel for appellees on April 17, 1943 omitted in printing.

[fol. 408] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO
RELY AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED
—Filed June 7, 1943

Appellant, reasserting and making part hereof by reference the assignments of error heretofore filed of record herein, presents and files the following statement of the points upon which he intends to rely:

I

The Court erred in sustaining the Interstate Commerce Commission's report and order entered under date of November 26, 1941, collectively referred to herein as the order, in Docket No. MC 42614, *Chicago & N. W. Ry. Co. Common Carrier Application*, 31 M. C. C. 299. The order misconstrued and misapplied the Motor Carrier Act, 1935, particularly sections 203 (14), 206, and 207 (U. S. C., Title 49, sec. 303, 306, and 307). The Commission ignored the legislative standards therein prescribed by the Congress and based its order upon arbitrary concepts and supposed [fol. 409] standards outside and beyond the terms and provisions of the applicable statute. The evidence shows that appellant and his predecessors in interest complied with all the legislative standards and requirements entitling appellant to the certificate of convenience and necessity contemplated by the Motor Carrier Act.

II

The Commission's order is arbitrary, violative of law, not supported by substantial evidence, and contrary to the undisputed evidence of record.

III

The Commission's order shows on its face that it is based on assumptions and conclusions of fact without support in the evidence of record, and the conclusions of the order are not supported by the facts therein found and stated.

IV

It was error to construe and apply the so-called grandfather clause of the Motor Carrier Act, 1935, as including a requirement that one applying for a certificate thereunder as a common carrier by motor vehicle must establish that he had assumed responsibility to the general public (as distinguished from the shippers involved) as to public liability and property damage resulting from operation of the motor vehicles over highways.

V

The Court erred in sustaining the Commission's order, thus approving and adopting, among other erroneous, unreasonable, arbitrary, and unlawful acts and omissions of the Commission, the following:

(a) In finding that the appellant and his predecessors [fol. 410] did not operate motor vehicles, either as owner or under a lease, or any other equivalent arrangement; and in failing to find in accordance with the undisputed evidence that the motor vehicle operations in question were instituted and carried on by appellant and his predecessors as common carriers by motor vehicle through arrangements made and continued by them with the vehicle owners.

(b) In finding that the contracts with the owners or possessors of motor vehicles (through which the common motor carrier service of appellant and his predecessors was arranged for and carried out) imposed upon those motor vehicle owners obligations ordinarily assumed by common carriers by motor vehicle; in basing its conclusions upon provisions of the contracts which are of no significance and not controlling of the issues here presented; and in failing to give necessary legal effect to the remaining provisions of the contracts.

(c) In finding that the motor vehicles were under the complete direction, control and domination of the contrac-

tors, notwithstanding the undisputed evidence of record before the Commission and the Court is that in every actual and legal sense material to this inquiry appellant and his predecessors directed and controlled the common motor carrier service being rendered through the instrumentalities of these vehicles in the transportation of freight for the public.

(d) In holding that the contractors were responsible to shippers of the freight, whereas the undisputed evidence before the Commission and the Court shows that the shippers' arrangements and contracts for the transportation of the freight were and are solely with the appellant and his predecessors who were and are fully responsible to the [fol. 411] shippers to the exclusion of the contractors.

(e) In finding that the operations considered were those of the contractors as common carriers by motor vehicle in their own right, notwithstanding the undisputed evidence before both the Commission and the Court established that because of the absence of the essential elements of common carriage, it must be found as a matter of law that these contractors were not common carriers of the traffic in question which was transported under arrangements exclusively made between appellant, his predecessors and the shippers.

(f) In requiring appellant to discontinue operations which he and his predecessors have been conducting in serving the public for a period of years, the effect of the order being to deprive appellant of property without due process of law and the public of a useful and urgently needed service.

(g) In going outside the record and denying the entire application on the assumption, unsupported by evidence of record, that all the so-called contractors were established truckers who had filed applications claiming grandfather rights with respect to the motor vehicle operations involved in carrying appellant's freight.

(h) In failing to find in accordance with the undisputed evidence that appellant's predecessors in interest instituted and thereafter carried on, through the agencies and instrumentalities of the contractors, their equipment and employes, the several motor vehicle operations designated in the application, under the contracts shown of record, and

hereby appellant's predecessors were rendering a bona fide common motor carrier service and conducting a bona fide operation thereof, on June 1, 1935, which has since been [fol. 412] continued to the present time; and in failing to grant a certificate under section 206 (a), Motor Carrier Act, to appellant in accord with such findings.

(i) In basing the order on inadequate and insufficient findings of fact, particularly in denying the entire application on the theory that each of the so-called contractors were common carriers of this traffic without evidence or any specific finding as to each of the contractors involved in the several widely separated operations.

(j) In failing to find and hold that, in view of the theory of the report and order that the Railway Company was not a common carrier, the transportation was rendered by the Railway Company as a private carrier and thus is not subject to regulation.

(k) In completely disregarding and failing to give any consideration or legal effect to appellant's claim of right to a certificate of public convenience and necessity and the undisputed evidence supporting such right, under sections 206 and 207, Motor Carrier Act, and independent of the claimed right under the so-called grandfather provisions; and in failing to grant a certificate of public convenience and necessity for proposed future operations by appellant independent of the grandfather rights.

VI

The Commission's order if not set aside, in the several respects set out above, will deprive appellant of his property without due process of law, in violation of the Fifth Amendment of the Constitution of the United States, because the order is

(a) Contrary to undisputed evidence.

(b) Based upon assumed facts not in evidence.

[fol. 413] (c) Based upon failure to give due legal effect to undisputed evidence.

(d) Based upon insufficient findings of fact.

(e) Contrary to law.

DESIGNATION OF PARTS OF RECORD TO BE PRINTED

I

Except as hereinafter specifically designated otherwise in paragraph II hereof, appellant hereby designates the entire record as heretofore filed in this Court as the parts of the record which he thinks necessary for the consideration of the above entitled cause and authorizes and directs the Clerk of the Supreme Court of the United States to have said entire record printed, provided, however, that he shall omit all duplication or repetition of titles and all other obviously unimportant matters and make proper note thereof.

II

Appellant designates the following portions of the record as unnecessary and to be omitted in printing:

(1) That part of Exhibit 1 (report of Interstate Commerce Commission in Docket No. MC 42614, *Chicago & N. W. Ry. Co. Common Carrier Application*, 31 M. C. C. 299) beginning with the fourteenth line on page 303 (R. 26) and ending with line thirty-two on page 305 relating to MC-42614 (Sub. Nos. 3 & 4) (R. 28).

(2) Exhibit A attached to answer of Interstate Commerce Commission (R. 46-54), same being report of Interstate Commerce Commission described in paragraph (1) above.

[fol. 414] (3) Exhibit 3, included in Exhibit 1-A, copy of 1938 Official Highway Map of Wisconsin (R. 231). Insert a notation that Exhibit 3 shows the highway routes over which motor carrier operations involved in this case were conducted are parallel with and closely adjacent to appellant's railroad lines.

(4) Pages 5 to 109, inclusive, of Exhibit 4 included in Exhibit 1-A (R. 234 to 239, inclusive). Insert notation that material omitted is similar in purport and design to pages 1 to 4, inclusive, of the same exhibit (R. 230 to 233, inclusive), and that aggregate tonnage shown on entire exhibit is 98,282,141 pounds.

(5) Exhibit 6 included in Exhibit 1-A (R. 343 to 346, inclusive), same being similar in purport and design to Ex-

hibit 3 attached to the complaint; except that paragraph 2 (d) of said Exhibit 6 shall be printed with notation that said paragraph does not appear in Exhibit 3.

(6) Reference to passengers and what follows on statement included in copy of application attached to stipulation dated February 3, 1943 (R. 354).

(7) The citation (R. 407). Insert: Citation usual form, showing service on attorneys for appellees on April 17, 1943.

Dated at Chicago, Ill., this 5th day of June, 1943.

William T. Faricy, Nye F. Morehouse, P. F. Gault,
Attorneys for Appellant.

[fol. 415]

PROOF OF SERVICE

Defendants herein, United States of America and Interstate Commerce Commission, hereby acknowledge receipt this day of true and correct copies of statement of points on which appellant intends to rely and designation of parts of record to be printed, and copies of this proof of service.

Dated at Washington, D. C., this 7th day of June, 1943.

Robert L. Price, Attorneys for United States of America. Allen Crenshaw, Attorneys for Interstate Commerce Commission.

[fol. 415a] [File endorsement omitted.]

[fol. 416] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—June 14, 1943

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on cover: File No. 47,548. Illinois, D. C. U. S., Term No. 70. Charles M. Thomson, as Trustee of the Property of the Chicago and North Western Railway Company, Appellant, vs. The United States of America and Interstate Commerce Commission. Filed May 24, 1943. Term No. 70, O. T. 1943.

Q. How long has it rendered service and held itself out as a common motor carrier between Green Bay and Fond du Lac?

Mr. Dayton: That is objected to. That has not got anything to do with this case.

The Witness: Since 1919.

[fol. 216] By Mr. Cannon:

Q. Continuously since that time?

A. That is correct.

Q. I will ask you whether or not it transported other merchandise in its vehicles besides that merchandise of the Chicago & North Western Railway Company?

A. It does.

Q. What volume does that business of the Chicago & North Western Railway Company bear to the total volume handled by the Northern Transportation Company in one year?

Mr. Gault: I object to that as wholly irrelevant and immaterial. I cannot see that it is pertinent to any issue in this proceeding.

Exam. Later: Objection overruled. You may answer.

Mr. Dayton: Between what points?

Exam. Later: Between—

Mr. Dayton: I would like to ask—

Exam. Later: —Green Bay and Fond du Lac, as I understood it.

Mr. Cannon: I am asking if he can give the approximate proportion it would bear.

The Witness: The gross operation of the Northern Transportation Company for 1937 was \$450,000.

Mr. Dayton: Was that all between Green Bay and Fond du Lac?

The Witness: That was on the entire route of the Northern Transportation Company.

Mr. Dayton: That was not just between Green Bay and Fond du Lac?

The Witness: No.

Mr. Dayton: I object and move that the answer be stricken.

Exam. Later: Do you have anything further to tie that up with, in connection with this particular operation?

[fol. 231] (Exhibit No. 3, a highway map, shows the highway routes over which motor carrier operations involved in this case were conducted are parallel with and closely adjacent to appellant's railroad lines.)

By Exam. Later:

Q. Do you know the tonnage, the proportionate tonnage, that you hauled in its relation to the tonnage for the Chicago & North Western Railway Company?

A. I can give it in dollars and cents for the whole operation.

Q. No. I mean, between Fond du Lac and Green Bay.

Mr. Cannon: Can you tell approximately?

The Witness: I cannot separate Fond du Lac to Green Bay from the total operation.

By Mr. Cannon:

Q. Can you give the approximate amount of tonnage handled for other shippers between Green Bay and Fond du Lac, in comparison to that handled for the Chicago & North Western Railway Company?

A. I do not quite understand the question.

Q. I say, can you give me the approximate tonnage, a comparison of the tonnage handled for all of the other shippers between Green Bay and Fond du Lac as compared with the Chicago & North Western Railway Company [fol. 218] between Green Bay and Fond du Lac?

Mr. Gault: At the risk of appearing captious, I want to point out and object to that question to the extent it assumes the Chicago & North Western Railway Company is a shipper.

Mr. Cannon: That is our position.

Exam. Later: That is one of the big questions here, whether this traffic was carried as Chicago & North Western Railway Company traffic, or whether it was carried as Northern Transportation Company traffic.

Mr. Gault: I object to that question as wholly unsupported by any evidence of record. It assumes something not in evidence; it assumes that the Chicago & North Western Railway Company—that is not a fact, and is not indicated by anything of record.

Certainly, he cannot assume that that has been established of record, and ask a question like that.

Mr. Cannon: Well, now, you have not in any way shown there was any contract with the Northern Transportation Company to render this service.

EXHIBIT No. 4 WITNESS S.E. Gregory

ROUTE NO. 1 - BETWEEN ST. CHARLES and GENEVA, ILL.

Truck service established August 31st, 1933.

<u>BETWEEN</u>	<u>POPULATION</u> <u>US Census 1930</u>	<u>TRUCK SCHEDULE</u>		<u>HIGHWAY</u>	<u>DISTANCE IN MILES</u>	
		<u>GOING TRIP</u>	<u>RETURN TRIP</u>		<u>Via Railroad</u> C&N.W. ICC #9986	<u>Via Highway</u>
Geneva, Ill.	4,592	Lv. 8:00 AM	Arr. 5:15 PM	Ill. 31		
and						
St. Charles, Ill.	5,354	Arr. 8:30 AM	Lv. 4:30 PM	Ill. 31	2.56	2

Note: Less than carload freight is handled in railroad service or (route No. 19) truck service to or from Geneva, Ill., and by truck between C. & N.W. Ry. freight station at Geneva and C. & N.W. Ry. freight station at St. Charles, Ill.

Equipment used on this route: Sterling 1930 - 2-ton; Sterling 1929 - 2½-ton; Studebaker 1934 - 3½-ton.

Condition of highway used on this route: Concrete pavement.

Mr. Gault: May I make my objection?

Exam. Later: The objection is overruled.

Mr. Cannon: You may answer the question, Mr. Leicht.

The Witness: What was the question?

Exam. Later: Read the question.

(The question was read.)

[fol. 219] The Witness: The Chicago & North Western Railway Company tonnage would be less than ten per cent of the total tonnage handled on that route.

By Mr. Cannon:

Q. I am going to ask you the same question in reference to the operation of the Terminal Truck Lines between Green Bay and Clintonville.

A. That would hold true there also.

Q. Would that hold true between Green Bay and Menominee, Michigan?

A. That is true.

Q. Would the tonnage offered to either the Northern Transportation Company or the Terminal Truck Lines in itself be sufficient at the present time to allow you a profit on the operations?

Mr. Gault: I object to that as wholly irrelevant and immaterial.

Exam. Later: The objection is sustained.

By Mr. Cannon:

Q. With respect to Leicht Transfer & Storage Company, between Green Bay and Sheboygan, does the Leicht Transfer & Storage Company handle any other merchandise between these points except that of the Chicago & North Western Railway Company?

A. It handles some, but not nearly as great a proportion as the Northern, or Terminal.

Q. Is the equipment used between Green Bay and Fond [fol. 220] du Lac owned by the Northern Transportation Company?

A. That is right.

Q. Licensed by them?

A. That is correct.

Q. And certificated by them?

A. That is correct.

Issued by

Chicago and North Western Railway Company

Charles P. Megan, Trustee

ISSUED DECEMBER 23, 1937

EFFECTIVE DECEMBER 31, 1937

Issued on five days' notice under Special Permission of the Interstate Commerce Commission Nos. M-9912, RM-919, and 165513 of December 21, 1937

Departure from the terms of Rules 2(a), 2(b), 4(i) and 9(e) of Tariff Circular 20 is authorized under Special Permission of the Interstate Commerce Commission Nos. M-9912, RM-919, and 165513 of December 21, 1937.

S. G. NETHERCOT,
General Freight Agent, C. & N. W. Ry. Co.,
CHICAGO, ILL.

R. O. SMALL,
General Freight Agent, C. & N. W. Ry. Co.,
CHICAGO, ILL.

H. A. MINTZ,
General Freight Agent, C. St. P. M. & O. Ry. Co.,
275 East Fourth Street,
ST. PAUL, MINN.

Issued by
H. B. SPANGLER,
Chief of Tariff Bureau, C. & N. W. Ry. Co.,
400 West Madison Street,
CHICAGO, ILL.

Tariffs listed on page 2 hereof, are hereby amended to include the following:

Substitution of Highway Vehicle Service for Rail Service between stations served by rail carriers

Wherever as to less than carload freight an originating or delivering railroad party to this tariff substitutes at its option highway vehicle service for actually available service by railroad between stations on its line, the rates and charges as published in this tariff, or as amended, will apply to the through service; the highway vehicle service in all cases to be limited to the most practicable highway routing nearest to the line of railroad making the substitution.

Expires with June 30, 1938

Q. Insured by them?

A. That is correct.

Q. Are the drivers on those units employes of the Northern Transportation Company?

A. They are.

Q. You carry compensation insurance on them?

A. We do.

Q. Social security.

A. We do.

Q. Unemployment?

A. We do.

Q. Is the same true of the operations of the Terminal Truck Lines?

A. That is correct.

Q. Do you also carry cargo insurance on all merchandise transported, whether it be that of the Chicago & North Western Railway Company, or any other shipper?

A. We do.

Q. You pay for the insurance?

[fol. 221] A. We do.

Q. That is a separate policy of yours?

A. That is correct.

Q. That is an all-inclusive policy covering all merchandise?

A. That is correct.

Q. Is that right?

A. Yes.

Q. It is not—it does not distinguish between the Chicago & North Western Railway Company as compared to any other shipper?

A. That is correct.

Q. In addition to that do you also pay a certain per cent of your earnings for insurance that the Chicago & North Western Railway Company carries?

A. We do.

Q. As far as the Northern Transportation Company is concerned, that is double insurance, is that right?

A. That is correct.

Q. Have you ever leased any of your vehicles to—when I say that, I refer to all three companies, Leicht Transfer & Storage Company, Terminal Truck Lines and Northern Transportation Company—have you ever leased any of your equipment to the Chicago & North Western Railway Company?

CHICAGO AND NORTH WESTERN RAILWAY COMPANY
Charles P. Megan, Trustee

NAME OF CONTRACTOR: Henry Roehlke

Date Effective: August 31, 1933.

Statement of Freight hauled in Station to Station Service (Run)
Between St. Charles and Geneva, Illinois.

EXHIBIT NO. _____

I.C.C. DOCKET M.C. _____

WITNESS: _____

Month of Service	Total Weight (Lbs) Hauled	Between (STA) Geneva, Ill.		and St. Charles, Ill.	
		Forwarded	Received	Forwarded	Received
1-35	231,141	67,702	163,439	163,439	67,702
2-35	131,755	60,001	71,754	71,754	60,001
3-35	203,212	102,096	101,116	101,116	102,096
4-35	180,551	98,537	82,014	82,014	98,537
5-35	187,846	105,668	82,181	82,181	105,668
6-35	189,516	109,224	80,292	80,292	109,224
7-35	157,481	75,519	81,962	81,962	75,519
8-35	170,117	79,962	90,155	90,155	79,962
9-35	180,487	92,311	88,176	88,176	92,311
10-35	196,874	104,951	91,923	91,923	104,951
11-35	217,955	125,496	92,459	92,459	125,496
12-35	148,025	82,395	65,630	65,630	82,395
1-36	196,014	93,745	102,269	102,269	93,745
2-36	312,301	161,467	150,834	150,834	161,467
3-36	308,512	114,416	194,096	194,096	114,416
4-36	513,760	136,785	376,975	376,975	136,785
5-36	811,976	119,125	692,851	692,851	119,125
6-36	723,226	169,726	553,500	553,500	169,726
7-36	390,338	134,292	256,046	256,046	134,292
8-36	365,041	136,941	228,100	228,100	136,941
9-36	466,240	137,493	328,742	328,742	137,498
10-36	758,916	143,233	615,683	615,683	143,233
11-36	423,510	107,985	315,525	315,525	107,985
12-36	339,748	112,505	227,243	227,243	112,505

Mr. Gault: I object to that as calling for a conclusion of the witness, if the Examiner please.

Exam. Later: I think I would ask less leading questions, [fol. 222]- Mr. Cannon. Let the witness state what he has done.

You have him on direct examination, as your witness.

Mr. Gault: If you say that the contract is the only agreement, of course, that answers the question, I object to the conclusion, which he is asking of this witness.

Exam. Later: I am going to sustain the objection, principally to the form of the question, rather than because of the grounds you gave.

Mr. Cannon: I assumed you were trying to get through in a hurry.

Exam. Later: We are, but I think we can hurry along without too many leading questions.

Mr. Cannon: I will ask you whether or not—what was that last remark, please?

Exam. Later: I said, proceed.

By Mr. Cannon:

Q. Do you know whether the Northern Transportation Company has any contract with the Chicago & North Western Railway Company for the handling of its merchandise?

A. We have not.

Q. I will ask you—

A. Wait a minute.

Q. Yes.

A. I wish to withdraw that.

Q. All right.

A. We have one contract between Green Bay and De Pere. [fol. 223] Q. That is the only contract?

A. That is correct.

Q. What is the distance from Green Bay to De Pere?

A. Five miles.

Q. I will ask you whether or not the Terminal Truck Lines have any contracts with the Chicago & North Western Railway Company?

A. We have not.

Mr. Gault: The Leicht Company has, though, has it not?

The Witness: That is correct.

Mr. Cannon: We agree to that.

By Mr. Cannon:

Q. I will ask you if either the Terminal Truck Lines or Northern Transportation Company has entered into any agreement with the Chicago & North Western Railway Company for the leasing of operating rights—

Mr. Gault: I object.

By Mr. Cannon, continuing:

Q. —at any time?

Mr. Gault: I object to that as leading, and calling for a conclusion of the witness.

Mr. Cannon: I asked him whether or not they have.

Exam. Later: You may answer.

The Witness: They have not.

By Mr. Cannon:

Q. I will ask you whether or not, Mr. Leicht, your company has—I am referring now to the Northern Transportation Company—published a tariff establishing a rate to [fol. 224] all common carriers for rendering service between Green Bay and Fond du Lac?

A. We have.

Q. At a certain rate?

A. We have.

Q. That tariff has been published with the Interstate Commerce Commission?

A. That is correct.

Q. I will ask you if you also published a similar tariff for intrastate transportation, with the Public Service Commission of Wisconsin?

A. That is correct.

Q. Is the same thing true of the Terminal Truck Lines?

A. Yes, sir.

Q. I will ask you whether or not Northern Transportation Company and the Terminal Truck Lines also handle intrastate freight for the Chicago & North Western Railway Company?

A. We do.

Q. Over the same routes as described in the application?

A. That is correct.

E OF CONTRACTOR: Henry Roehl

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

Charles P. Megan, Trustee

EXHIBIT NO. _____

Contract Effective: August 31, 1933.

TYPICAL SHIPMENTS

I.C.C. DOCKET M.C. _____

In run between St. Charles and Geneva, Illinois.

WITNESS: _____

Waybill		Origin	Commodity	Weight	Hauled by Truck		Final Destination
No.					From	To	
8-35	243	West Carrollton, Ohio	4 Ctn. Envelopes	139	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
1-35	185	St. Charles, Ill.	Misc.	185	St. Charles, Ill.	Geneva, Ill.	Portland, Ore.
-35	2	St. Charles, Ill.	Misc.	200	"	"	Denver, Colo.
2-35	1517	Canton, Ohio	1 Bx. Sheet Steel	300	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
-35	12	Cambridge Sprgs., Pa.	1 Crt. Machy. Pts.	71	"	"	"
-35	2	St. Charles, Ill.	Misc.	415	St. Charles, Ill.	Geneva, Ill.	Denver, Colo.
-35	59255	St. Louis, Mo.	Gardening Tools	491	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
6-35	136	St. Charles, Ill.	Misc.	320	St. Charles, Ill.	Geneva, Ill.	Fairfield, Ia.
-35	1895	Green Bay, Wis.	3 Bx. Cheese	155	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
9-35	131	St. Charles, Ill.	Misc.	170	St. Charles, Ill.	Geneva, Ill.	Tellico Plains, Tex.
-35	5348	Waterbury, Conn.	1 Bx. Buttons	142	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
-35	3	St. Charles, Ill.	Misc.	50	St. Charles, Ill.	Geneva, Ill.	Savannah, Ga.
2-35	MP 70	Menard, Ill.	Clothing	650	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
-35	2	St. Charles, Ill.	Misc.	850	St. Charles, Ill.	Geneva, Ill.	Indianapolis, Ind.
6-35	1050	Kalamazoo, Mich.	1 Crt. Stove & Board	491	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
-35	7	St. Charles, Ill.	Misc.	677	St. Charles, Ill.	Geneva, Ill.	Texarkana, Ark.
1-35	35	Oshkosh, Wis.	3 Manhole Covers	330	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
-35	102	St. Charles, Ill.	Misc.	158	St. Charles, Ill.	Geneva, Ill.	Brooklyn, N. Y.
10-35	336	Galion, Ohio	2 Double Bgs. Chilled Shot	2,000	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
4-35	127	St. Charles, Ill.	4 Bx. Labels	326	St. Charles, Ill.	Geneva, Ill.	Newport, Tenn.
12-35	454	Newburg, N.Y.	5 Rolls Leather	460	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
2-35	135	Canton, Ohio	1 Steel Sheet	385	"	"	"
4-35	125	St. Charles, Ill.	4 Crts. Cal. Pails	305	St. Charles, Ill.	Geneva, Ill.	Los Angeles, Calif.
2-36	9	"	2 Crts. Softeners	400	"	"	Dubuque, Ia.
2-36	465	Newburgh, N.Y.	2 Brls. Leather	203	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
-36	2958	So. Charleston, W. Va.	3 Ctns. Resin	557	Geneva, Ill.	"	"
-36	38	St. Charles, Ill.	8 Ctns. Furn.	288	St. Charles, Ill.	Geneva, Ill.	Tampa, Fla.
-36	112	"	6 Ctns. Furn.	172	"	"	Astoria, N. Y.
25-36	35087	Cleveland, Ohio	1 Ct. Cabt.	190	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
2-36	51	St. Charles, Ill.	9 Cart. Furn.	385	St. Charles, Ill.	Geneva, Ill.	Winston Salem, N.C.

Mr. Cannon: I think that is all on direct, if the Examiner please.

Exam. Later: Is there any cross examination?

Mr. Gault: I have a few questions.

Exam. Later: You may cross examine.

[fol. 225] Cross-examination.

By Mr. Gault:

Q. With reference to this traffic which the Chicago & North Western Railway Company gives you, you are paid by the Chicago & North Western Railway Company, are you not?

A. Leicht Transfer & Storage Company is.

Q. Yes.

A. That is correct.

Q. That is the concern that has the contract with the Chicago & North Western Railway Company?

A. That is correct.

Q. And any deal between Leicht Transfer & Storage Company and any other carrier is between them, and the Chicago & North Western Railway Company is not involved, is that right?

A. That is correct.

Q. Leicht Transfer & Storage Company is paid by the Chicago & North Western Railway Company under contract, is it not?

A. I assume so, yes.

Q. No bills of lading are issued at all, are they?

A. Only the manifest that is made out from each station. We get a manifest from each station as we pick up freight.

Q. At the station?

A. That is correct.

Q. The testimony Mr. Starf gave in connection with that manifest is correct, is it not?

A. That is correct, yes.

[fol. 226] Q. Are you opposing this application, and do you want it denied?

A. Yes.

Mr. Cannon: In that connection, I might make this statement, in reference to protestants: Our only interest in this case is to come in so the Commission may know the true

facts. We are interested in continuing on with the operation, of course, as we have been in the past.

However, we feel it is our duty to tell the Commission the facts, and to come in and protect any property rights we might have.

Exam. Later: I think the question has already been answered.

Mr. Cannon: All right.

Exam. Later: Had you finished, Mr. Gault?

Mr. Gault: That is all.

Exam. Later: Are there any further questions of this witness?

(No response.)

Exam. Later: You may be excused.

(Witness excused.)

Exam. Later: Is that all, Mr. Cannon?

Mr. Cannon: That is all we have to offer, if the Examiner please.

Exam. Later: Do parties desire to file briefs in this [fol. 227] case?

Mr. Gault: Off the record.

Exam. Later: Off the record.

(Discussion outside the record.)

Exam. Later: Back on the record. The contracts are to be filed on April 28th.

Mr. Gault: I think the record ought to show that.

Exam. Later: Briefs will be due on the 21st of May. Is there anything further, gentlemen?

(No response.)

Exam. Later: The hearing is closed.

(At 4:45 o'clock p. m., March 28, 1938, hearing closed.)

[fol. 228]

PLAINTIFF'S EXHIBIT No. 1-A

Interstate Commerce Commission
Washington

I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true

CHICAGO AND NORTH WESTERN RAILWAY COMPANY
Charles P. Megan, Trustee

Page No. 2

NAME OF CONTRACTOR: Henry Roehlke.

EXHIBIT NO. _____

Contract Effective: August 31, 1933.

TYPICAL SHIPMENTS

I.C.C. DOCKET M.C. _____

In run between St. Charles and Geneva, Illinois.

WITNESS: _____

Waybill		Origin	Commodity	Weight	Hauled by Truck		Final Destination
Date	No.				From	To	
1-36	219	Lanett, Ala.	6 Rolls C.P.Gds.	410	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
2-36	279	Pawtucket, R.I.	2 Rolls C.P.Gds.	160	"	"	"
8-36	327	St. Charles, Ill.	19 Ctns. Furn.	1,067	St. Charles, Ill.	Geneva, Ill.	Washington, D.C.
1-36	56394	St. Louis, Mo.	1 Drum Wax	47	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
4-36	355	St. Charles, Ill.	3 Ctns. Ptd. Mtr.	135	St. Charles, Ill.	Geneva, Ill.	Florence, Ala.
9-36	300	"	8 Ctns. Furn.	241	"	"	Muskogee, Okla.
6-36	1159	New York, N.Y.	3 Crt. Furn.	400	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
11-36	293	St. Charles, Ill.	3 Crt. Spkrs.	202	St. Charles, Ill.	Geneva, Ill.	Philadelphia, Pa.
1-36	11	Proctor, Vt.	2 Bx. Marble	360	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
4-36	10611	Covington, Va.	2 Drms. Paint	215	"	"	"
12-36	414	St. Charles, Ill.	6 Ctn. Furn.	360	St. Charles, Ill.	Geneva, Ill.	Fayetteville, N.C.
7-36	935	Parkersburg, W.Va.	1 Ctn. Furn.	150	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
30-36	2132	St. Charles, Ill.	6 Ctn. Furn.	204	St. Charles, Ill.	Geneva, Ill.	Washington, D.C.
3-36	148	Louisville, Ky.	5 Ctn. Furn.	230	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
6-36	345	St. Charles, Ill.	11 Ctn. Furn.	340	St. Charles, Ill.	Geneva, Ill.	Wellsboro, Pa.
2-1-36	27	"	2 Ctn. Furn.	186	"	"	Mansfield, Ohio
2-4-36	15206	Covington, Va.	2 Drm. Pigments	329	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
8-37	3080	Hattiesburg, Miss.	4 Ctns. Cushions	380	"	"	"
18-37	529	St. Charles, Ill.	7 Bgs. Sand	637	St. Charles, Ill.	Geneva, Ill.	Geneva, Ill.
25-37	988	"	1 Kit. Cab. Base	90	"	"	"
4-37	85	Geneva, Ill.	1 Bx. Drugs	80	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
1-37	3	St. Charles, Ill.	Misc.	400	St. Charles, Ill.	Geneva, Ill.	Geneva, Ill.
1-37	22	Geneva, Ill.	Misc.	706	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
1-37	3	St. Charles, Ill.	Misc.	126	St. Charles, Ill.	Geneva, Ill.	Geneva, Ill.
27-37	522	Geneva, Ill.	Misc.	1,683	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.
1-37	2	St. Charles, Ill.	Misc.	906	St. Charles, Ill.	Geneva, Ill.	Geneva, Ill.
1-37	4	Geneva, Ill.	Misc.	130	Geneva, Ill.	St. Charles, Ill.	St. Charles, Ill.

(Here is a list of similar shipments in past and present days of the
affiliated. Approximate dates: 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 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2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688, 2689, 2690, 2691, 2692, 2693, 2694, 2695, 2696, 2697, 2698, 2699, 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2723, 2724, 2725, 2726, 2727, 2728, 2729, 2730, 2731, 2732, 2733, 2734, 2735, 2736, 2737, 2738, 2739, 2740, 2741, 2742, 2743, 2744, 2745, 2746, 2747, 2748, 2749, 2750, 2751, 2752, 2753, 2754, 2755, 2756, 2757, 2758, 2759, 2760, 2761, 2762, 2763, 2764, 2765, 2766, 2767, 2768, 2769, 2770, 2771, 2772, 2773, 2774, 2775, 2776, 2777, 2778, 2779, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, 2789, 2790, 2791, 2792, 2793, 2794, 2795, 2796, 2797, 2798, 2799, 2800, 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2824, 2825, 2826, 2827, 2828, 2829, 2830, 2831, 2832, 2833, 2834, 2835, 2836, 2837, 2838, 2839, 2840, 2841, 2842, 2843, 2844, 2845, 2846, 2847, 2848, 2849, 2850, 2851, 2852, 2853, 2854, 2855, 2856, 2857, 2858, 2859, 2860, 2861, 2862, 2863, 2864, 2865, 2866, 2867, 2868, 2869, 2870, 2871, 2872, 2873, 2874, 2875, 2876, 2877, 2878, 2879, 2880, 2881, 2882, 2883, 2884, 2885, 2886, 2887, 2888, 2889, 2890, 2891, 2892, 2893, 2894, 2895, 2896, 2897, 2898, 2899, 2900, 2901, 2902, 2903, 2904, 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 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3090, 3091, 3092, 3093, 3094, 3095, 3096, 3097, 3098, 3099, 3100, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3112, 3113, 3114, 3115, 3116, 3117, 3118, 3119, 3120, 3121, 3122, 3123, 3124, 3125, 3126, 3127, 3128, 3129, 3130, 3131, 3132, 3133, 3134, 3135, 3136, 3137, 3138, 3139, 3140, 3141, 3142, 3143, 3144, 3145, 3146, 3147, 3148, 3149, 3150, 3151, 3152, 3153, 3154, 3155, 3156, 3157, 3158, 3159, 3160, 3161, 3162, 3163, 3164, 3165, 3166, 3167, 3168, 3169, 3170, 3171, 3172, 3173, 3174, 3175, 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, 3184, 3185, 3186, 3187, 3188, 3189, 3190, 3191, 3192, 3193, 3194, 3195, 3196, 3197, 3198, 3199, 3200, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208, 3209, 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217, 3218, 3219, 3220, 3221, 3222, 3223, 3224, 3225, 3226, 3227, 3228, 3229, 3230, 3231, 3232, 3233, 3234, 3235, 3236, 3237, 3238, 3239, 3240, 3241, 3242, 3243, 3244, 3245, 3246, 3247, 3248, 3249, 3250, 3251, 3252, 3253, 3254, 3255, 3256, 3257, 3258, 3259, 3260, 3261, 3262, 3263, 3264, 3265, 3266, 3267, 3268, 3269, 3270, 3271, 3272, 3273, 3274, 3275, 3276, 3277, 3278, 3279, 3280, 3281, 3282, 3283, 3284, 3285, 3286, 3287, 3288, 3289, 3290, 3291, 3292, 3293, 3294, 3295, 3296, 3297, 3298, 3299, 3300, 3301, 3302, 3303, 3304, 3305, 3306, 3307, 3308, 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317, 3318, 3319, 3320, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329, 3330, 3331, 3332, 3333, 3334, 3335, 3336, 3337, 3338, 3339, 3340, 3341, 3342, 3343, 3344, 3345, 3346, 3347, 3348, 3349, 3350, 3351, 3352, 3353, 3354, 3355, 3356, 3357, 3358, 3359, 3360, 3361, 3362, 3363, 3364, 3365, 3366, 3367, 3368, 3369, 3370, 3371, 3372, 3373, 3374, 3375, 3376, 3377, 3378, 3379, 3380, 3381, 3382, 3383, 3384, 3385, 3386, 3387, 3388, 3389, 3390, 3391, 3392, 3393, 3394, 3395, 3396, 3397, 3398, 3399, 3400, 3401, 3402, 3403, 3404, 3405, 3406, 3407, 3408, 3409, 3410, 3411, 3412, 3413, 3414, 3415, 3416, 3417, 3418, 3419, 3420, 3421, 3422, 3423, 3424, 3425, 3426, 3427, 3428, 3429, 3430, 3431, 3432, 3433, 3434, 3435, 3436, 3437, 3438, 3439, 3440, 3441, 3442, 3443, 3444, 3445, 3446, 3447, 3448, 3449, 3450, 3451, 3452, 3453, 3454, 3455, 3456, 3457, 3458, 3459, 3460, 3461, 3462, 3463, 3464, 3465, 3466, 3467, 3468, 3469, 3470, 3471, 3472, 3473, 3474, 3475, 3476, 3477, 3478, 3479, 3480, 3481, 3482, 3483, 3484, 3485, 3486, 3487, 3488, 3489, 3490, 3491, 3492, 3493, 3494, 3495, 3496, 3497, 3498, 3499, 3500, 3501, 3502, 3503, 3504, 3505, 3506, 3507, 3508, 3509, 3510, 3511, 3512, 3513, 3514, 3515, 3516, 3517, 3518, 3519, 3520, 3521, 3522, 3523, 3524, 3525, 3526, 3527, 3528, 3529, 3530, 3531, 3532, 3533, 3534, 35

copies of Exhibits No. 1 to 6, both inclusive, filed at the hearing held March 28, 1938, at Chicago, Illinois, in Docket No. MC-42614, Chicago and North Western Railway Company (Charles M. Thomson, Trustee) Common Carrier Application, the originals of which are now on file and of record in the office of said Commission.

In Witness Whereof I have hereunto set my hand and affixed the Seal of said Commission this 25th day of January, A. D. 1943.

W. P. Bartel, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 229]

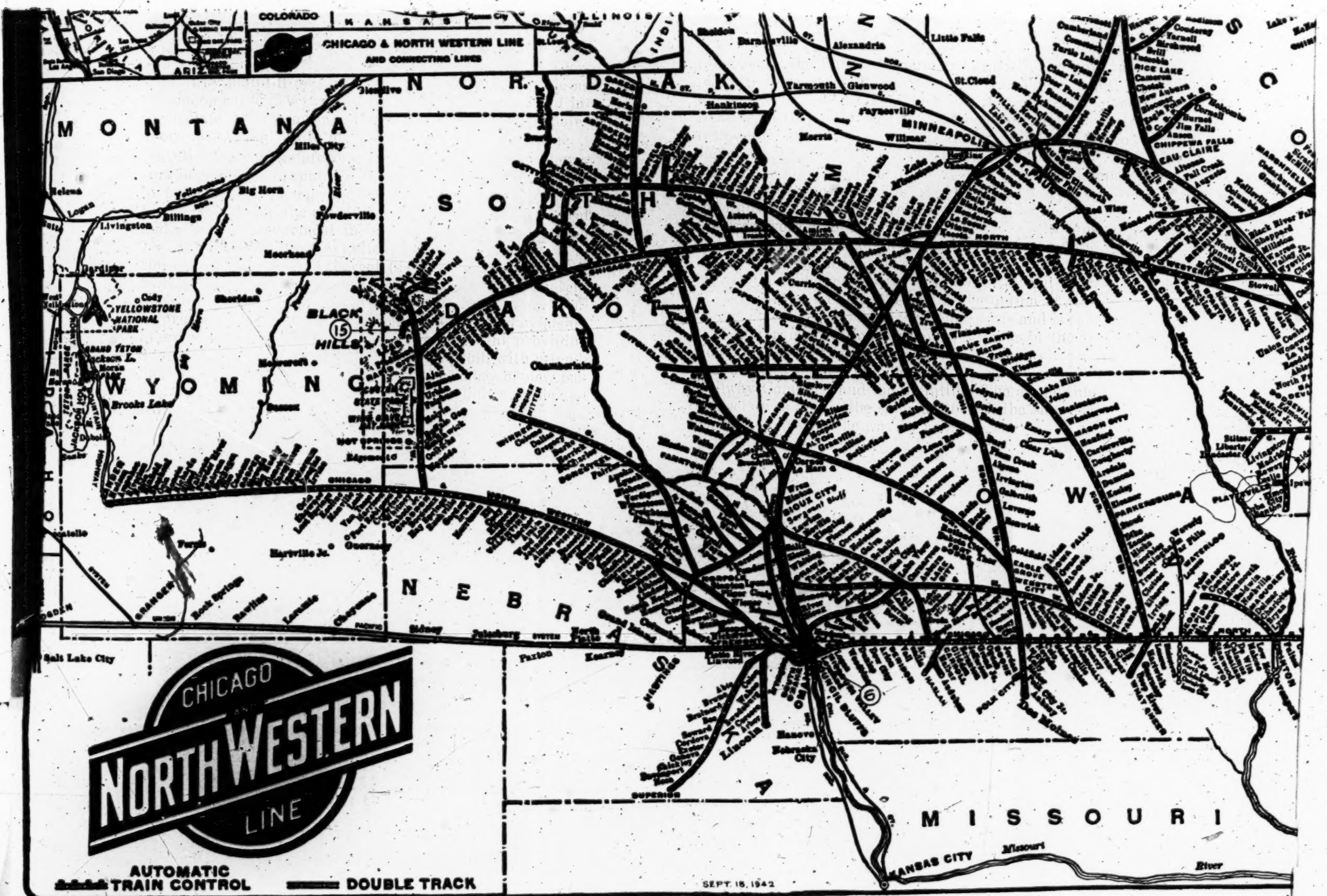
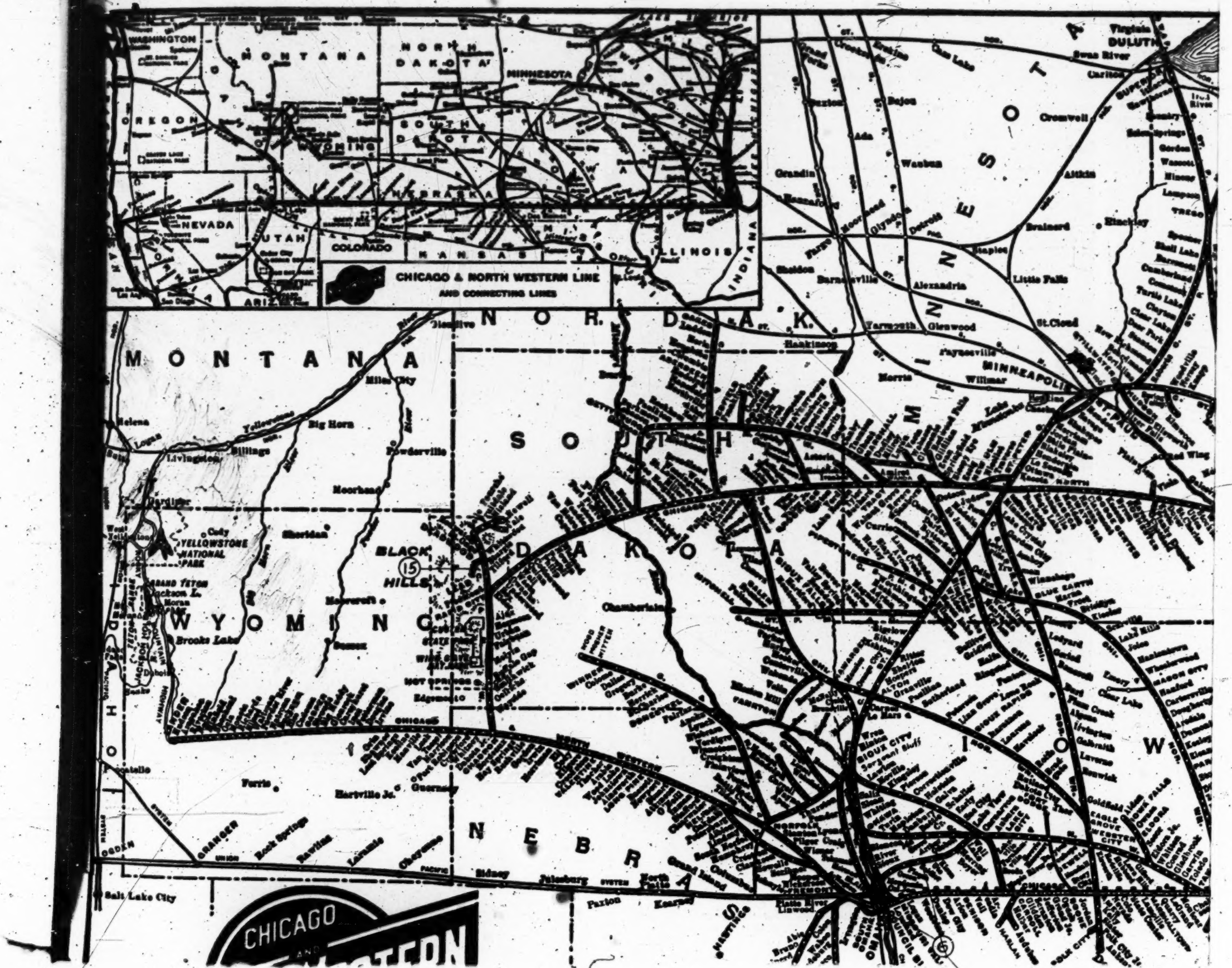
EXHIBIT No. 1

Witness G. W. Hand

I. C. C. Docket No. MC 42614

Route. No.	Explanation of Route Numbers	Date Started
1	Between St. Charles and Geneva, Ill.	8-31-3
2	Between Rochelle and Creston, Ill.	5-1-3
3	Between Rochelle and Ashton, Ill.	5-1-3
4	Between Dixon and Franklin Grove, Ill.	5-1-3
5	Between De Kalb and Malta, Ill.	5-1-3
6	Between Council Bluffs, Iowa, and Omaha, Nebraska.	7-7-3
7	Between Wausau and Rothschild, Wis.	11-10-3
8	Between Hurley, Wis., and Ironwood, Mich.	10-23-3
9	Between Marinette, Wis., and Menominee, Mich.	9-14-3
10	Between Marinette, Wis., and Escanaba, Mich.	1-15-3
11	Between Sheboygan and Green Bay, Wis.	6-25-3
12	Between Fond du Lac and Green Bay, Wis.	6-25-3
13	Between Green Bay and Clintonville, Wis.	3-25-3
14	Between Green Bay, Wis., and Menominee, Mich.	6-25-3
15	Between Deadwood and Lead, S. Dak.	10-1-3
16	Between Red Granite and Neshkoro, Wis.	4-1-3
17	Between Proviso and Woodstock, Ill.	5-17-3
18	Between Proviso and Algonquin, Ill.	5-17-3
19	Between Proviso and DeKalb, Ill.	7-9-3
20	Between Proviso and Belvidere, Ill.	12-14-3
21	Between Proviso and Waukegan, Ill.	12-4-3
22	Between Proviso and Chicago, Ill.	12-4-3
23	Between Proviso and West Chicago, Ill.	4-2-3

(Here follows Exhibit No. 2, side folio 230)



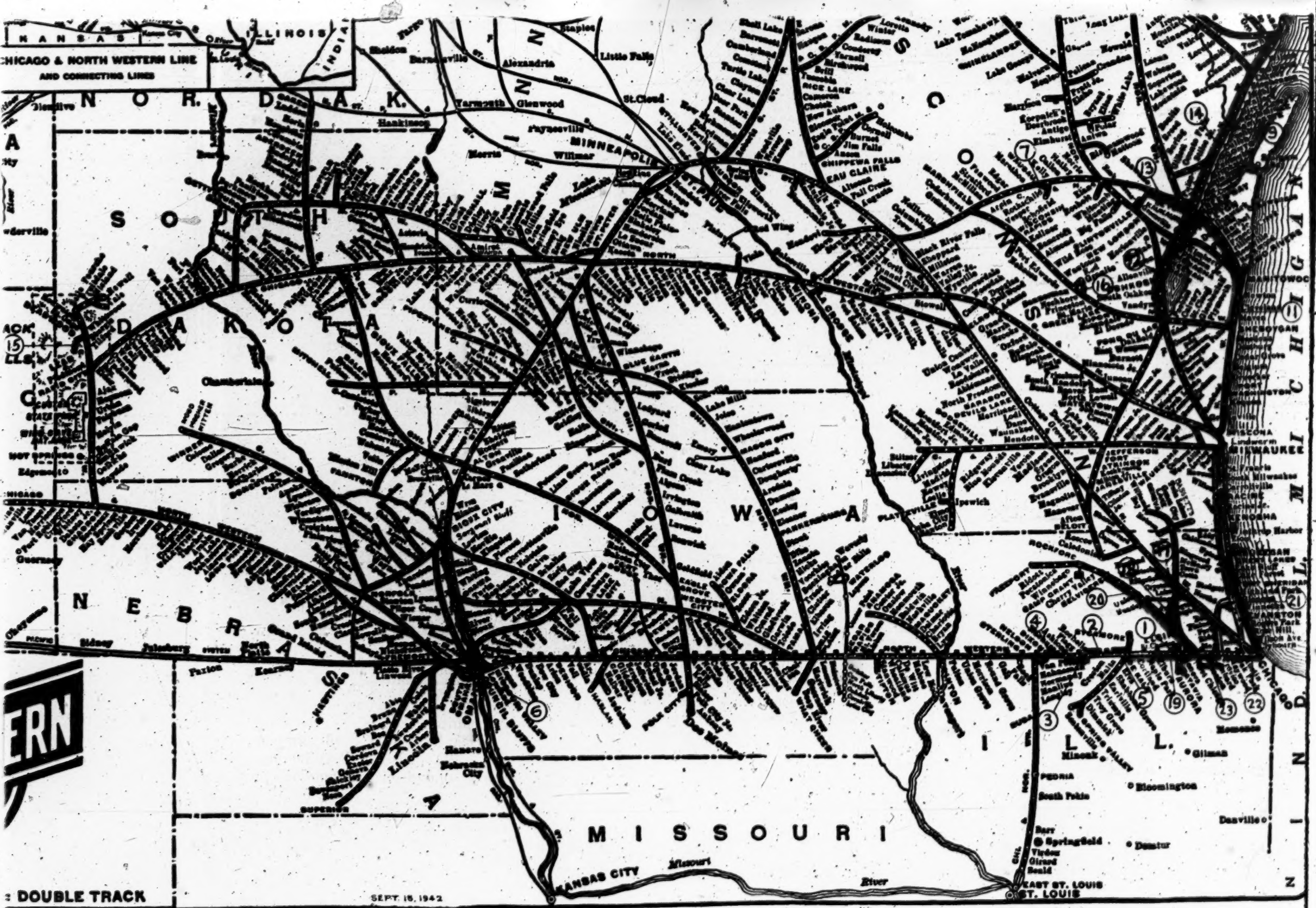


EXHIBIT No. 5 WITNESS S.E. Gregory

Applicable Only on Interstate Traffic

**Special Supplement to C. Nos.
Listed herein.**

Special Supplement to Tariffs Listed Herein

Issued by

Chicago and North Western Railway Company

Charles P. Megan, Trustee

ISSUED DECEMBER 23, 1937

EFFECTIVE DECEMBER 31, 1937

Issued on five days' notice under Special Permission of the Interstate Commerce Commission Nos. M-9912, RM-919, and 165513 of December 23, 1937.

Departure from the terms of Rules 2(a), 2(b), 4(i) and 9(e) of Tariff Circular 20 is authorized under Special Permission of the Interstate Commerce Commission Nos. M-9912, RM-919, and 165513 of December 23, 1937.

S. G. NETHERCOT,
General Freight Agent, C. & N. W. Ry. Co.,
CHICAGO, ILL.

R. O. SMALL,
General Freight Agent, C. & N. W. Ry. Co.,
CHICAGO, ILL.

H. A. MINTZ,
General Freight Agent, C. St. P. M. & O. Ry. Co.,
275 East Fourth Street,
ST. PAUL, MINN.

Issued by
H. B. SPANGLER,
Chief of Tariff Bureau, C. & N. W. Ry. Co.,
400 West Madison Street,
CHICAGO, ILL.

. Special Supplement to Tariffs Enumerated Below .

LIST OF TARIFFS SUPPLEMENTED HEREBY

Supplement No.	Cancels Supplement No.	TO C. & N. W. Ry.	Supplements which Contain all Changes from the Original Tariff that Are Effective on the Date Hereof	Supplement No.	Cancels Supplement No.	TO C. & N. W. Ry.	Supplements which contain all Changes from the Original Tariff that Are Effective on the Date Hereof
119	109	I.C.C. No. 9572	31, 43, 51, 98, 108, 111, 112, 113, 114, 115, 116, 117, 118 and 119	46	30	I.C.C. No. 10552	29, 31, 35, 38, 39, 40, 41, 42, 43, 44, 45 and 46
119	109	G.F.D. No. 15000-F		46	30	G.F.D. No. 11000-F	
74	72	I.C.C. No. 9729	15, 22, 36, 46, 51, 54, 60, 61, 68, 71, 73 and 74	8	6	I.C.C. No. 10556	7 and 8
74	72	G.F.D. No. 11600-H		8	6	G.F.D. No. 16818-B	
59	57	I.C.C. No. 9899	1, 5, 8, 10, 15, 23, 28, 32, 33, 34, 39, 42, 47, 48, 51, 54, 56, 58 and 59	17	13	I.C.C. No. 10570	15, 16 and 17
59-A	58	G.F.D. No. 12600-I	1, 5, 8, 10, 12, 16, 24, 29, 33, 34, 35, 40, 43, 48, 49, 52, 55, 57, 59 and 60	17	13	G.F.D. No. 16954-D	
41	34	I.C.C. No. 10273	37, 38, 39, 40 and 41	35	20	I.C.C. No. 10573	17, 19, 21, 27, 31, 32, 33, 34 and 35
41	34	G.F.D. No. 16577-H		43	27	G.F.D. No. 13514-G	2, 11, 12, 44, 20, 22, 24, 26, 28, 34, 38, 39, 40, 41, 42 and 43
68	56	I.C.C. No. 10383	53, 63, 64, 65, 66, 67 and 68	33	15	I.C.C. No. 10574	24, 26, 27, 28, 31, 32 and 33
201	166	G.F.D. No. 16988	7, 27, 80, 160, 161, 164, 177, 190, 191, 192, 194, 195, 196, 197, 198, 199, 200 and 201	33	15	G.F.D. No. 8366-I	
28	20	I.C.C. No. 10494	18, 21, 22, 24, 25, 26, 27 and 28	23	13	I.C.C. No. 10575	17, 19, 20, 21, 22 and 23
28	20	G.F.D. No. 16720-D		33	18	G.F.D. No. 11915-P	4, 8, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32 and 33
30	24	I.C.C. No. 10427	17, 23, 26, 28, 29 and 30	9	3	I.C.C. No. 10603	8 and 9
43	30	G.F.D. No. 8110-I	20, 29, 32, 36, 38, 39, 40, 41, 42 and 43	9	3	G.F.D. No. 17054-A	
15	12	I.C.C. No. 10459	1, 6, 14 and 15	20		I.C.C. No. 10620	12, 14, 16, 18, 19 and 20
15	12	G.F.D. No. 16863-I		20		G.F.D. No. 5678-I	12, 14, 16, 16-A, 18, 18-A, 19 and 20
25	21	I.C.C. No. 10463	22, 23 and 25	19		I.C.C. No. 10622	4, 9, 14, 15, 17, 18 and 19
25	21	G.F.D. No. 16922-B		19		G.F.D. No. 10567-N	
59	38	I.C.C. No. 10519	33, 40, 41, 44, 50, 53, 54, 56, 57, 58 and 59	7		I.C.C. No. 10633	1, 3, 4, 5, 6 and 7
73	48	G.F.D. No. 8115-N	32, 43, 50, 51, 54, 57, 63, 64, 67, 68, 70, 71, 72 and 73	7		G.F.D. No. 8948-K	1, 3, 4, 5, 6, 6-A and 7
49	32	I.C.C. No. 10524	31, 39, 42, 44, 45, 46, 47, 48 and 49	6		I.C.C. No. 10634	
58	37	G.F.D. No. 7100-P	10, 35, 40, 46, 49, 53, 54, 55, 56, 57 and 58	6		G.F.D. No. 5778-I	5, 14, 15, 7, 18 and 19
28	17	I.C.C. No. 10542	16, 18, 23, 24, 25, 26, 27 and 28	6		I.C.C. No. 10642	1, 2, 3, 4, 5 and 6
28	17	G.F.D. No. 12800-I		6		G.F.D. No. 16549-D	A, 1, 2, 3, 4, 4A, 5 and 6

59	57	I.C.C. No. 9899	1, 5, 8, 10, 15, 23, 28, 32, 33, 34, 39, 42, 47, 48, 51, 54, 56, 58 and 59	8	6	G.F.D. No. 16818-B	
59-A	58	G.F.D. No. 12600-I	1, 5, 8, 10, 12, 16, 24, 29, 33, 34, 35, 40, 43, 48, 49, 52, 55, 57, 59 and 60	17	13	I.C.C. No. 10570	15, 16 and 17
41	34	I.C.C. No. 10273	37, 38, 39, 40 and 41	17	13	G.F.D. No. 16954-D	
41	34	G.F.D. No. 16577-H		35	20	I.C.C. No. 10573	17, 19, 21, 27, 31, 32, 33, 34 and 35
68	56	I.C.C. No. 10383	53, 63, 64, 65, 66, 67 and 68	43	27	G.F.D. No. 13514-G	2, 11, 12, 14, 20, 22, 24, 26, 28, 34, 38, 39, 40, 41, 42 and 43
201	166	G.F.D. No. 16988	7, 27, 80, 160, 161, 164, 177, 190, 191, 192, 194, 195, 196, 197, 198, 199, 200 and 201	33	15	I.C.C. No. 10574	24, 26, 27, 28, 31, 32 and 33
28	20	I.C.C. No. 10494	18, 21, 22, 24, 25, 26, 27 and 28	23	13	G.F.D. No. 8366-I	
28	20	G.F.D. No. 16720-D		33	18	I.C.C. No. 10575	17, 19, 20, 21, 22 and 23
20	24	I.C.C. No. 10427	17, 23, 26, 28, 29 and 30	9	3	G.F.D. No. 11915-P	4, 8, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32 and 33
13	30	G.F.D. No. 8110-I	20, 29, 32, 36, 38, 39, 40, 41, 42 and 43	9	3	I.C.C. No. 10603	8 and 9
15	12	I.C.C. No. 10459	11, 16, 14 and 15	20		G.F.D. No. 17054-A	
15	12	G.F.D. No. 16863-J		20		I.C.C. No. 10620	12, 14, 16, 18, 19 and 20
25	21	I.C.C. No. 10493	22, 24 and 25	19		G.F.D. No. 5678-U	12, 14, 16, 16-A, 18, 18-A, 19 and 20
25	21	G.F.D. No. 16922-B		19		I.C.C. No. 10622	
59	38	I.C.C. No. 10519	33, 40, 41, 44, 50, 53, 54, 56, 57, 58 and 59	19		G.F.D. No. 10567-N	4, 9, 14, 15, 17, 18 and 19
73	48	G.F.D. No. 8115-N	32, 43, 50, 51, 54, 57, 63, 64, 67, 68, 70, 71, 72 and 73	7		I.C.C. No. 10633	1, 3, 4, 5, 6 and 7
49	32	I.C.C. No. 10524	31, 39, 42, 44, 45, 46, 47, 48 and 49	7		G.F.D. No. 8948-K	1, 3, 4, 5, 6, 6-A and 7
58	37	G.F.D. No. 7100-P	10, 35, 40, 46, 49, 53, 54, 55, 56, 57 and 58	6		I.C.C. No. 10634	
28	17	I.C.C. No. 10542	16, 18, 23, 24, 25, 26, 27 and 28	6		G.F.D. No. 5778-L	3, 4, 5, 7, 8 and 9
28	17	G.F.D. No. 12800-I		6		I.C.C. No. 10642	1, 2, 3, 4, 5 and 6
						G.F.D. No. 16549-D	A, 1, 2, 3, 4, 4A, 5 and 6

1 Connecting Link Supplement.

2 Suspension Notice.

3 Vacating Notice.

4 Special Supplement.

5 Contains only portions under postponement in I. & S. Docket No. 4365.

6 Withdrawal Notice.

7 Cancellation Notice.

8 Withdrawal and Cancellation Notice.

9 Contains only portions under Suspension in I. & S. Dockets Nos. 4335 or 4337.

10 Postponement Notice.

11 Except portions under Suspension.

12 Except portions under Postponement.

*Applicable only on Intrastate traffic.

*Expired by limitation.

[fol. 343] EXHIBIT No. 6—Omitted in Printing

Witness Starr

[fols. 344-346] (Exhibit 6 is an agreement similar in purport and design to exhibit 3 to complaint except that the following paragraph does not appear in exhibit 3):

1. (d) It is understood that the Contractor shall not have by reason hereof exclusive right to transport said described freight, and that the Railway Company shall have the right to arrange with others for transportation thereof.

[fol. 347] PLAINTIFF'S EXHIBIT No. 2

Order

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 24th day of February, A. D. 1938.

No. MC 42614

In the matter of the application, as amended, of Charles P. Megan, Trustee of the Property of Chicago and North Western Railway Company, of 400 West Madison Street, Chicago, Illinois, for a certificate of public convenience and necessity (Form BMC A-1) authorizing operation as a common carrier by motor vehicle in the transportation of commodities generally, in interstate commerce, in the State of Illinois, Iowa, Michigan, South Dakota, Wisconsin, and Nebraska, over the following routes:

- Route No. 1. Between St. Charles and Geneva, Ill.
- Route No. 2. Between Rochelle and Creston, Ill.
- Route No. 3. Between Rochelle and Ashton, Ill.
- Route No. 4. Between Dixon and Franklin Grove, Ill.
- Route No. 5. Between DeKalb and Malta, Ill.
- Route No. 6. Between Council Bluffs, Iowa, and Omaha, Nebr.
- Route No. 7. Between Wausau and Rothschild, Wis.
- Route No. 8. Between Hurley, Wis., and Ironwood, Mich.
- Route No. 9. Between Marinette, Wis., and Menominee, Mich.
- Route No. 10. Between Marinette, Wis., and Escanaba, Mich.

Route No. 11. Between Sheboygan and Green Bay, Wis.
 Route No. 12. Between Fond du Lac and Green Bay, Wis.
 Route No. 13. Between Green Bay and Clintonville, Wis.
 Route No. 14. Between Green Bay, Wis., and Menominee, Mich.

Route No. 15. Between Deadwood and Lead, S. Dak.
 Route No. 16. Between Red Granite and Neshkoro, Wis.
 Route No. 17. Between Proviso and Woodstock, Ill.
 Route No. 18. Between Proviso and Algonquin, Ill.
 Route No. 19. Between Proviso and De Kalb, Ill.
 Route No. 20. Between Proviso and Belvidere, Ill.
 Route No. 21. Between Proviso and Waukegan, Ill.
 Route No. 22. Between Proviso and Chicago, Ill.
 Route No. 23. Between Proviso and West Chicago, Ill.

[fols. 348-349] A more detailed statement of route or routes (or territory) is contained in said application, as amended, copies of which are on file and may be inspected at the office of the Interstate Commerce Commission, Washington, D. C., or offices of the boards, commissions, or officials of the States involved in this application.

It appearing, That the above-entitled matter is one which the Commission is authorized by the Motor Carrier Act, 1935, to refer to an examiner:

It is ordered, That the above-entitled matter be, and it is hereby, referred to Examiner A. E. Later for hearing on the 28th day of March, A. D. 1938, at 10 o'clock A. M. (standard time), at the Hotel Sherman, Chicago, Illinois, and for recommendation of an appropriate order thereon accompanied by the reasons therefor;

It is further ordered, That in the event the evidence indicates that applicant is entitled to receive a form of authority other than that applied for, such other form of authority will be granted;

It is further ordered, That notice of this proceeding be duly given;

And it is further ordered, That any party desiring to be notified of any change in the time or place of the said hearing (at his own expense if telegraphic notice becomes necessary) shall advise the Bureau of Motor Carriers of the Commission, Washington, D. C., to that effect by notice which must reach the said Bureau within ten days from the

date of service hereof, and that the date of mailing of this notice shall be considered as the time when said notice is served.

By the Commission, Division 5.

W. P. Bartel, Secretary. (Seal.)

A true copy:

W. P. Bartel, Secretary of the Interstate Commerce
Commission. (Seal.)

[fol. 350] IN DISTRICT COURT OF THE UNITED STATES

(Title omitted)

STIPULATION—Filed Feb. 18, 1943

Pursuant to the understanding had at the hearing in the above-entitled cause on January 28, 1943, it is hereby stipulated that the attached is a true and correct copy of the application referred to in the Interstate Commerce Commission's report and order of November 26, 1941, as MC-42614 (Exhibit A attached to the complaint).

It is further stipulated that Exhibit No. 3 attached to the complaint and Exhibit No. 6 in the proceeding before the Commission which is included in and as a part of Exhibit 1-A before this Court, are correct copies of two of the contracts between the Chicago and North Western Railway Company and the persons or firms named in the aforesaid application; and that the remainder of said contracts were in substantially identical form as shown to the Commission at the hearing before it (Exhibit 1 before the Court, pages 69-73).

[fol. 351] Dated this 3rd day of February, 1943.

Charles M. Thomson, as Trustee of the property of
Chicago and North Western Railway Company, By
Nye F. Morehouse, P. F. Gault, His Attorneys.
United States of America, By Edward Dumbauld,
Special Assistant to the Attorney General. Inter-
state Commerce Commission, By Allen Crenshaw,
Its Attorney.

(Here follow 2 photolithographs, side folios 352, 352a)

ALTERNATE FORM

✓ *Eligible for application*

PROPERTY AND PASSENGER CARRIER APPLICATION

(Under "Grandfather" Clause)

(This form may be used only by Common Carriers engaged in transportation of property or passengers in interstate or foreign commerce on June 1, 1935, and by Contract Carriers so engaged on July 1, 1935, and continuously thereafter, and may be used in lieu of either B.M.C. 1 or 2, and must be filed on or before February 12, 1936.)

BEFORE THE INTERSTATE COMMERCE COMMISSION

Application of **Charles P. Megan, Trustee of the property of**
Chicago and North Western Railway Company
 (Full name)

for appropriate authority to continue to operate as a motor carrier under
 the Motor Carrier Act, 1935.

DOCKET NO. _____
 (Do not fill in)

APPLICATION

To the Interstate Commerce Commissioner, Washington, D. C.

APPLICANT STATES:

Applicant's name is **Charles P. Megan, Trustee of the property of the**
Chicago and North Western Railway Company

Business address **400 East Madison Street,**
 (Street and number)

Chicago
 (City)

Cook
 (County)

Illinois
 (State)

Applicant is a **Trustee** doing business under the trade name or style of
 (Individual, partnership or corporation)

Charles P. Megan, Trustee of the property of Chicago and North Western Railway Company.

Applicant, or its predecessor in interest, was in bona fide operation in interstate or foreign commerce as a common carrier of passengers or property by motor vehicle on June 1, 1935, or as a contract carrier by motor vehicle on July 1, 1935, and has so operated as such continuously since the applicable date, except as to interruptions of service over which the applicant or its predecessor in interest had no control, over the route or routes or within the territory as follows:

Applicant lists on sheet attached hereto and made a part hereof the territory which it serves.
 (Describe briefly the route, routes, or territory served)

Service is performed by it over the routes named by motor vehicles operated under contract with the persons or firms named.

In filing this application, Applicant agrees to furnish all of the facts, statements, data, and evidence which are required in Forms B.M.C. 1 or 2, including exhibits thereto, on or before a date hereafter to be designated by the Commission.

for appropriate authority to continue to operate as a motor carrier under the Motor Carrier Act, 1935.

(Do not fill in)

APPLICATION

To the Interstate Commerce Commission, Washington, D. C.

APPLICANT STATES:

Applicant's name is Charles P. Megan, Trustee of the property of the Chicago and North Western Railway Company

Business address 400 West Madison Street, Chicago
(Street and number) (City)

Cook Illinois
(County) (State)

Applicant is a Trustee doing business under the trade name or style of
(Individual, partnership or corporation)

Charles P. Megan, Trustee of the property of Chicago and North Western Railway Company.

Applicant, or its predecessor in interest, was in bona fide operation in interstate or foreign commerce as a common carrier of passengers or property by motor vehicle on June 1, 1935, or as a contract carrier by motor vehicle on July 1, 1935, and has so operated as such continuously since the applicable date, except as to interruptions of service over which the applicant or its predecessor in interest had no control, over the route or routes or within the territory as follows:

Applicant lists on sheet attached hereto and made a part hereof the territory which it serves. Service is performed by it over the routes named by motor vehicles operated under contract with the persons or firms named.
(Describe briefly the route, routes, or territory served)

In filing this application, Applicant agrees to furnish all of the facts, statements, data, and evidence which are required in Forms P.M.C. 1 or 2, including exhibits thereto, on or before a date hereafter to be designated by the Commission.

Applicant has complied with the orders of the Commission relative to the service of application on interested parties; and will submit such additional information to substantiate Applicant's prayer herein as the Commission may require.

Applicant reserves the right to claim exemption from any and all provisions of the Motor Carrier Act, 1935, and the filing of this application shall not be deemed a waiver thereof.

WHEREFORE, Applicant hereby applies to the Interstate Commerce Commission for appropriate authority to continue to operate as a motor carrier, pursuant to Section 208(a) or Section 209(a) of the Motor Carrier Act, 1935.

Dated this

day of

February, 1935

Charles P. Megan, Trustee of the property of Chicago and North Western Railway Company
(Applicant)

(OVER)

OATH

State of Illinois)

ss:

County of Cook)

George Hand
(Name of affiant)

makes oath and says that he is the Agent
(Title of affiant)

of the Charles P. Megan, Trustee of the property of
Chicago and North Western that he is authorized on the part of said applicant to
(Name of Applicant) Railway Company;

verify and file with the Interstate Commerce Commission this application; that he has carefully examined all of the statements contained in such application; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

George Hand

Subscribed and sworn to before me, a Notary Public in and for the State and County above named,

this 10th day of February, 1936.

(SEAL)

My commission expires

Margaret C. Carmody

GENERAL INSTRUCTIONS

This is an emergency form which MAY be used as an alternate form in lieu of either Forms B.M.C. 1 or 2, by those claiming rights under the "Grandfather" clause of the Motor Carrier Act, 1935, as Common Carriers of property or passengers on June 1, 1935, or Contract Carriers on July 1, 1935, and continuously thereafter in interstate or foreign commerce. All those who use this form will be required subsequently to support the allegations of the application by furnishing all of the facts, statements, data, and other evidence required in Forms B.M.C. 1 and 2, including exhibits thereto, on or before a date hereafter to be designated by the Commission.

"Certificates of public convenience and necessity" will be issued to Common Carriers, and "Permits" to Contract Carriers..

Applications on this form or on B.M.C. 1 or 2 must be filed on or before February 12, 1936. The Interstate Commerce Commission does not have authority under the Motor Carrier Act, 1935, to further extend the time for filing beyond said date. Loss of rights under the "Grandfather" clause will result from a failure to file applications therefor within the time above specified. If an operator is in doubt as to whether the service he renders comes within any of the exemptions provided in the Act, he should file an application. The filing of such application will not be deemed a waiver of any right to claim exemption from any and all provisions of the Motor Carrier Act, 1935.

Charles P. Megan, Trustee of the property of
of the **Chicago and North Western**; that he is authorized on the part of said applicant to
(Name of Applicant) Railway Company;

verify and file with the Interstate Commerce Commission this application; that he has carefully examined all of the statements contained in such application; that he has knowledge of the matters set forth therein and that all such statements made and matters set forth therein are true and correct to the best of his knowledge, information, and belief.

Howland

Subscribed and sworn to before me, a Notary Public in and for the State and County above named,

this 10th day of February, 1936.

(SEAL)

My commission expires

Margaret C. Carmody

GENERAL INSTRUCTIONS

This is an emergency form which MAY be used as an alternate form in lieu of either Forms B.M.C. 1 or 2, by those claiming rights under the "Grandfather" clause of the Motor Carrier Act, 1935, as Common Carriers of property or passengers on June 1, 1935, or Contract Carriers on July 1, 1935, and continuously thereafter in interstate or foreign commerce. All those who use this form will be required subsequently to support the allegations of the application by furnishing all of the facts, statements, data, and other evidence required in Forms B.M.C. 1 and 2, including exhibits thereto, on or before a date hereafter to be designated by the Commission.

"Certificates of public convenience and necessity" will be issued to Common Carriers, and "Permits" to Contract Carriers.

Applications on this form or on B.M.C. 1 or 2 must be filed on or before February 12, 1936. The Interstate Commerce Commission does not have authority under the Motor Carrier Act, 1935, to further extend the time for filing beyond said date. Loss of rights under the "Grandfather" clause will result from a failure to file applications therefor within the time above specified. If an operator is in doubt as to whether the service he renders comes within any of the exemptions provided in the Act, he should file an application. The filing of such application will not be deemed a waiver of any right to claim exemption from any and all provisions of the Motor Carrier Act, 1935.

Applications should be typed, and one copy kept in Applicant's files. The original of this application, properly signed and sworn to before a notary public, and one additional copy must be returned to:

THE INTERSTATE COMMERCE COMMISSION
BUREAU OF MOTOR CARRIERS
WASHINGTON, D.C.

and one true copy must be filed with the Board, or Governor if there is no Board, of each State within which operations covered by this application are conducted.

[fol. 353]

Freight

Contractor	Between	Highway
Henry Roehl	St. Charles, Geneva and Proviso, Ill.	U. S. 330
H. W. Colwill	Rochelle and Creston, Ill.	U. S. 30
Lester Farver	Rochelle, Flagg and Ashton, Ill.	U. S. 30
W. H. Trowbridge	Dixon, Franklin Grove and Nachusa, Ill.	U. S. 30
Nelson & Co.	DeKalb and Malta, Ill.	U. S. 30
A. W. Slack Transfer Company	Omaha, Neb. and Council Bluffs, Ia.	U. S. 6, 75, 30A
Omaha Merchants Express & Transfer Company	Omaha, Neb. and Council Bluffs, Ia.	U. S. 6, 75, 30A
E. E. Bansom	Denison and Deloit, Ia.	State 21
Hugo Steckling	Wausau and Rothschild, Wis.	State 29 & 51
Dave McRae	Hurley, Wis. and Ironwood, Mich.	U. S. 2
Felix Stang	Marinette, Wis. and Menominee, Mich.	U. S. 41
L. & L. Trucking Service	Marinette, Wis. and Escanaba, Mich.	U. S. 31
Leicht Transfer & Storage Co.	Sheboygan and Green Bay, Wis.	U. S. 141
	Manitowoc and Two Rivers, Wis.	State 42
	Green Bay and Marinette, Wis.	U. S. 141 and 41
	Green Bay and Shawano, Wis.	State 29
	Green Bay and Fond du Lac, Wis.	U. S. 41
	Green Bay and Two Rivers, Wis.	State 147 and 141
	Shawano and Clintonville, Wis.	State 22
	Deadwood and Lead, S. D.	U. S. 85
Lead-Deadwood Transfer Co.	Eagle River and Phelps, Wis.	State 70
Strong & Manley	Neshkora and Red Granite, Wis.	State N
B. E. Bauman	Proviso, Des Plaines, Mount Prospect, Arlington Heights, Palatine, Barrington, Fox River Grove, Cary and Crystal Lake, Ill.	U. S. 20, 12 and 45 State 7 & 54
F. Landon Cartage Co.	Proviso, Aurora, North Aurora, Batavia and St. Charles, Ill.	U. S. 12, 20, 30, 32 & 45 State 64
[fol. 354-355]		
F. Landon Cartage Co.	Proviso, Niles, Center, Wilmette, Kenilworth, Winnetka, Hubbard Woods, Glencoe, Highland Park, Fort Sheridan, Lake Forest, Lake Bluff and Chicago, Ill.	U. S. 14, 20 and 45 State 54 and 57
F. Landon Cartage Co.	Waukegan, Great Lakes, Naval Training Station, Lake Bluff, Lake Forest, Fort Sheridan, Highland Park, Glencoe, Hubbard Woods, Winnetka, Kenilworth and Wilmette, Ill.	U. S. 41
F. Landon Cartage Co.	Proviso, Bellwood, Maywood, Melrose Park, Forest Park, Oak Park and Chicago, Ill.	U. S. 20
F. Landon Cartage Co.	Proviso, Villa Park, Lombard, Glen Ellyn, Wheaton, Winfield and West Chicago, Ill.	U. S. 20 State 64
F. Landon Cartage Co.	Elgin, Gilberts, Pingree Grove, Huntley, Union Grove, Marengo, Garden Prairie, Sycamore, Cortland, Maple Park, Elburn, and Geneva, Ill.	U. S. 20, 30 and 430 State 23

[fol. 356] IN DISTRICT COURT OF THE UNITED STATES

(Title omitted)

Findings of Fact and Conclusions of Law—March 19, 1943

The above cause of action came on for hearing before a duly constituted three-judge court on January 28, 1943, and was submitted upon the pleadings, records of the Interstate Commerce Commission as offered in evidence, arguments and briefs of the parties thereto. The court enters its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. The records of the Interstate Commerce Commission were offered in evidence, and are before the court.

2. Plaintiff filed application with the Interstate Commerce Commission, on February 11, 1936, for a certificate of public convenience and necessity, under the "grandfather" provisions of Section 206(a) of the Motor Carrier Act of 1935, (U. S. C. Title 49 Sect. 306) seeking authority, as a common carrier by motor vehicle, to transport freight, passengers, baggage, and mail, between named points over designated routes, an operation then conducted through [fol. 357] the use of vehicles provided by independent motor carriers under written contract. Later application of plaintiff for certificates as a common carrier by motor vehicle, under Section 207(a) of the Motor Carrier Act of 1935, (U. S. C. Title 49 Sect. 307) were filed by plaintiff and granted by the Interstate Commerce Commission, and although considered in the Report and Order entered November 26, 1941, here subject to review, such applications are not involved in this action and need not here be considered. Hearings were held on March 28, 1938, and thereafter on November 26, 1941, the Interstate Commerce Commission, by and through Division 5, entered its report and order, (Ex. A to Answer of Commission), denying application of plaintiff as filed February 11, 1936. The Interstate Commerce Commission, as a whole, denied plaintiff's petition for reconsideration and rehearing on November 2, 1942, effective January 1, 1943, the effective date being thereafter extended, by the Commission, to April 1, 1943.

3. There is substantial evidence in the Record of the Interstate Commerce Commission, to support the findings and conclusions as stated in the Report and Order, entered November 26, 1941, (Exhibit A to Commission Answer) which said Report and Order are hereby adopted and made a part of these Findings of Fact, by reference.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the action herein, and of the parties thereto.

2. Operations which entitled an application to a "grandfather" certificate, as a common carrier by motor vehicle, under provisions of Section 206(a) of the Motor Carrier Act of 1935, (U. S. C. Title 49 Sect. 306) are "bona fide operations" engaged in on June 1, 1935, and since that time, over which applicant exercised direction and control, and for which applicant assumed responsibility to the public, both as to cargo and as to public liability and property [fol. 358] damage resulting from operation of motor vehicles over highways.

3. The Report and Order of the Interstate Commerce Commission, entered November 26, 1941, is lawful and within statutory authority of this Commission.

4. The Report and Order of the Interstate Commerce Commission, entered November 21, 1941, is supported by substantial evidence, in the Commission record.

5. Plaintiff was given a full and fair hearing by the Interstate Commerce Commission, upon its application, and in connection with the Report and Order, entered November 21, 1941.

6. No constitutional right of plaintiff has been violated by the Report and Order of the Interstate Commerce Commission, entered November 21, 1941, and plaintiff has suffered no damage by reason thereof.

7. The complaint herein is without merit, and should be dismissed at the cost of plaintiff.

J. Earl Major, Judge of the 7th Circuit Court of Appeals; William H. Holly, United States District Judge; Philip L. Sullivan, United States District Judge.

[fol. 359] IN UNITED STATES DISTRICT COURT

ORDER DISMISSING COMPLAINT

The above-entitled cause came on for hearing on January 28, 1943, plaintiff and defendants being represented by counsel, and being submitted up the pleadings, oral argument and briefs of counsel, and the court having entered its findings of fact and conclusions of law deciding that the complaint herein should be dismissed.

It Is Therefore ~~Ordered~~ and Adjudged, That the complaint herein be, and the same is hereby dismissed, at the cost of plaintiffs.

This, the 19th day of March, 1943.

J. Earl Major, Judge of the 7th Circuit Court of Appeals. William H. Holly, United States District Judge. Philip L. Sullivan, United States District Judge.

[fol. 361] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

NOTICE OF MOTION—Filed March 29, 1943

To: Edward Dumbauld, Special Assistant to the Attorney General, Department of Justice, Washington, D. C. Allen Crenshaw, Attorney, Office of the Chief Counsel, Interstate Commerce Commission, Washington, D. C. James J. Lewis, Assistant United States Attorney, 450 U. S. Court House, Chicago, Ill.

Please take notice that the undersigned will bring on for hearing before this Court at the court room of Honorable Philip L. Sullivan, United States District Judge, at the United States Court House, Chicago, Illinois, at 10:00 o'clock A. M., on March 29, 1943, or as soon thereafter as counsel can be heard, a motion that the Court amend and supplement its findings and conclusions and order of March 19, 1943, so as to provide for a stay of enforcement of the Commission's order of November 26, 1941, in its Docket No. MC 42614, and a stay of the enforcement of this Court's order of March 19, 1943, in this cause, pending the decision

of plaintiff's appeal herein by the United States Supreme Court and upon such terms as to bond or otherwise as the Court in its discretion shall determine.

[fol. 362] The grounds for said motion are as follows:

1. The motor vehicle operations of plaintiff involved in this suit and with respect to which application was made to the Interstate Commerce Commission for a certificate of public convenience and necessity were, as stated in the Commission's order of November 26, 1941, all commenced prior to June 1, 1935. Defendants do not question the lawfulness of such operations at the time they were commenced, nor do they question the lawfulness under Motor Carrier Act, 1935, of the continuance of said operations pending the Commission's final determination of the aforesaid application. They assert only that continuance of such operations will now become unlawful on or after April 1, 1943, because the defendant Commission has decided these operations were and are not of the character entitling plaintiff to rights under the so-called "grandfather" clause.

2. Plaintiff believes and contends in good faith that the Commission misconstrued and misapplied the provisions of the Motor Carrier Act, 1935, referred to in the complaint, and erred in deciding that plaintiff was not entitled to such certificate. Plaintiff likewise believes and contends that the findings, conclusions, and judgment of this Court, sustaining the Commission's decision and dismissing his complaint, are in error, and he therefore desires to have the decision of this Court and the decision of the Commission reviewed by the United States Supreme Court, and, to that end, plaintiff duly and promptly will take the necessary steps to perfect such an appeal.

3. As alleged in plaintiff's complaint and proved at the hearing before this Court, the volume of merchandise freight traffic handled by plaintiff through the aforesaid [fol. 363] motor vehicle operations has increased substantially and is now in excess of 150,000,000 pounds annually and is still increasing. The gross revenue derived by plaintiff from that business is approximately \$600,000.00 per year. Plaintiff desires to continue those motor vehicle operations for the handling of said traffic, and, if required to discontinue them pending the decision of the proposed appeal, plaintiff would lose a very large part, if not all, of that

business which is now obtained by him because of the flexibility and greater speed of handling it between plaintiff's rail stations by means of the aforesaid motor vehicles under the existing contracts referred to in the Commission's decision. If required to discontinue the carrying on of this business pending the decision on the appeal, the plaintiff's trust estate would lose the benefit of the existing contracts, which would necessarily be abrogated, and plaintiff would be unable to continue to handle this freight by other means because other equipment is not available under present war emergency conditions, and the public would be deprived of a useful and needed form of transportation, and its business seriously and unnecessarily disturbed.

4. By reason of the foregoing facts of record in this case, none of which is disputed, plaintiff will suffer serious, substantial, and irreparable damage and injury in the event the Supreme Court on appeal should reverse the decision of this Court, unless this Court, in the exercise of its discretion, maintains a *status quo* by granting plaintiff a stay which will permit the continuance of the aforesaid operations pending the decision on appeal. That plaintiff would be damaged by the order's becoming effective immediately, in substance was admitted on behalf of the Commission at the trial herein.

5. The handling of the aforesaid large volume of merchandise freight traffic through the aforesaid motor vehicle operations is a matter of considerable economy and great convenience to a large number of shippers constituting that portion of the public served thereby. This is confirmed by the continuing increase in the volume thereof. That this transportation service is in the public interest and meets the public convenience and necessity, was conceded by counsel for defendants at the argument before this Court, defendants' only objection to the continuance thereof being that, for the reasons found by the Commission in its order, the operations did not entitle plaintiff to a certificate as claimed under the "grandfather" clause. It is not shown or claimed that any portion or section of the public will be adversely affected in any manner or that anyone will suffer any damage in any way by virtue of the continuance of these operations by plaintiff pending decision on the proposed appeal.

6. The questions of law involved in the decision of this case under the particular facts here presented are novel and heretofore have not been passed upon by the Supreme Court of the United States. The correctness of the conclusions and decision reached in the Commissioner's order of November 26, 1941, denying plaintiff's application in its Docket No. MC 42614, is open to very serious question and doubt for the following reasons:

(a) That decision was by a division of the Commission consisting of three Commissioners, one of whom vigorously dissented and would have granted plaintiff's application (31 M. C. C. p. 307). That Commissioner, Mr. Eastman, was the principal draftsman of the Motor Carrier Act.

(b) While the whole Commission denied plaintiff's petition for reconsideration and rehearing, the Commission in so [fol. 365] doing acted directly contrary to its contemporaneous decisions in *Crooks Terminal Warehouse, Inc., Contract Carrier Application*, 34 M. C. C. 679, and *Boston & Maine Transportation Company Common Carrier Application*, 34 M. C. C. 599, wherein grandfather rights were granted to other railroads under circumstances substantially identical with those shown to the Commission in plaintiff's behalf in MC 42614.

7. Should the Commission's order become effective plaintiff's asserted rights under the grandfather clause would be extinguished and present operations necessarily discontinued, thus making it impossible to restore the *status quo* should plaintiff eventually prevail on appeal. Motor Carrier Act, 1935, is recent legislation of regulatory and remedial character. Decisions of the United States Supreme Court construing the "grandfather" clause have, in general, inclined toward liberality in validating motor carrier operations which were in existence June 1, 1935, and in permitting continuance thereof. Whether or not plaintiff should have the right to continue his aforesaid operations is a question of law under the undisputed facts of record before the Commission and this Court. Final denial of his right to do so would be in derogation of plaintiff's rights at common law and under the statutes existing prior to Motor Carrier Act, 1935, would seriously hamper and obstruct plaintiff in affording a prompt, flexible, and economical transportation service for the public, and it is

therefore appropriate that plaintiff should be permitted to continue said operations until final determination of this legal question on appeal.

Said motion is based upon the affidavit of George W. Hand, attached hereto and served herewith, upon the verified complaint and all the records, files, and proceedings herein.

[fol. 366]. Dated March 23, 1943.

Nye F. Morehouse, P. F. Gault, Attorneys for Plaintiff.

400 W. Madison St., Chicago, Ill.

[fol. 367] STATE OF ILLINOIS,
County of Cook, ss:

AFFIDAVIT OF SERVICE

Gwendolyn Griffen, being duly sworn, says that she is employed in the Law Department of the Trustee of the Chicago and North Western Railway Company, and that on the 23rd day of March, 1943, she served a copy of the foregoing notice and affidavit upon Edward Dumbauld, Special Assistant to the Attorney General, Department of Justice, Washington, D. C., Allen Crenshaw, Attorney, Office of the Chief Counsel, Interstate Commerce Commission, Washington, D. C., and James J. Lewis, Assistant United States Attorney, 450 U. S. Court House, Chicago, Ill., by depositing in the United States mails at Chicago, Illinois, copies of said notice and affidavit, enclosed in sealed envelopes, first-class postage prepaid, addressed to them as aforesaid.

Gwendolyn Griffen.

Subscribed and sworn to before me this 23rd day of March, 1943. Margaret C. Carmody, Notary Public in and for said County and State. My commission expires July 19, 1945. (Seal.)

[fol. 368] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AFFIDAVIT OF GEORGE W. HAND

STATE OF ILLINOIS,
County of Cook, ss:

George W. Hand, being first duly sworn, on his oath says:

He is Assistant to the Chief Executive Officer, Chicago and North Western Railway Company, Charles M. Thomson, Trustee, and has been continuously an employe of that property, hereinafter referred to as the Railway Company, and later of the Trustee, in the Engineering and Executive Departments for some 40 years. He has been and is thoroughly familiar with plaintiff's properties and operations, and since the development of the transportation of freight and passengers by motor vehicle over the highways has investigated and studied the possibilities of that form of transportation with relation to transportation furnished by the Railway Company before and after control of the property was assumed by plaintiff and his predecessor. The particular motor carrier operations here before the Court were commenced all prior to June 1, 1935, following [fol. 369] his investigation and recommendation to the management, and he has been and is completely familiar with these operations in every aspect, with what they were designed to accomplish and are accomplishing, and the need for continuing them under the present plan of operation, not only in the interest of plaintiff but also in the interest of the public.

These motor vehicle operations have been carried on by plaintiff and his predecessors continuously since they were instituted, are being carried on presently, and plaintiff desires to carry them on in the future and to continue providing the public with this form of transportation. The volume of freight handled by these operations has increased substantially and it is now in excess of 150,000,000 pounds annually and the volume is still increasing. The gross revenue derived by plaintiff from the business is approximately \$600,000.00 per year.

The present plan of operation is what is known as a new form of transportation combining essential elements of

both rail transportation and motor transportation, and an indispensable characteristic of it is that it is wholly under the control and direction of plaintiff. Unless a stay be granted herein pending appeal plaintiff will be required to discontinue the aforesaid operations, and plaintiff would lose a large part, if not all, of the business which has been attracted to and is being transported in this service because of the flexibility of the service and greater speed in handling the traffic between plaintiff's rail stations by means of the [fols. 370-371] present plan of operation, making use of motor vehicles obtained under existing contracts referred to in the Commission's decision. If required to discontinue the carrying on of this form of transportation pending decision on appeal, plaintiff's trust estate would lose the benefit of the existing form of transportation and also the contracts which necessarily would be abrogated, and plaintiff would be unable to continue to handle this freight by other means because other equipment is not now available under present conditions. If required to discontinue this service plaintiff not only would lose the traffic and revenue produced by the present plan, but also would lose the benefit of measures of economy and efficiency in handling not only less-than-carload or merchandise freight but also carload freight resulting from present operations. The public also would be injured by being deprived suddenly and in time of emergency of a useful and much needed form of transportation service which it has enjoyed for a period of years. Damage both to plaintiff and the trust estate and the public would be immediate and irreparable.

George W. Hand.

Subscribed and sworn to before me this 23rd day of March, 1943. Margaret C. Carmody, Notary Public in and for said County and State. My commission expires July 19, 1945. (Seal.)

[fol. 372] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER GRANTING STAY, ETC.

This matter coming on for hearing on timely motion of plaintiff for amended and additional findings of fact and

amendment of the decree and judgment entered herein under date of March 19, 1943, and counsel for defendants having advised the Court that they do not object, the Court finds:

1. The questions of law involved in this case are novel and important as to which there is a reasonable doubt.

2. Immediate enforcement of the order of the Interstate Commerce Commission under review herein would result in a serious and unnecessary disturbance of the course of business, affecting not alone the parties to this litigation but the public now enjoying this form of transportation.

3. The public interest would not be adversely affected, but, on the contrary, would be preserved by maintaining the *status quo* pending appeal and disposition of this cause by the Supreme Court of the United States.

It Is Ordered:

That enforcement of the Interstate Commerce Commission's order of November 26, 1941, in Docket MC-42614 effective as amended April 1, 1942, and enforcement of this Court's decree and judgment of March 19, 1943, be and the same hereby are suspended and stayed pending appeal to the Supreme Court of the United States and final disposition of the cause by that Court; and the findings and judgment of the Court are amended accordingly.

Enter:

J. Earl Major, Circuit Judge; William H. Holly,
District Judge; Phillip L. Sullivan, District Judge.

Dated: March 29, 1943.

[fol. 375] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

Petition for Appeal, Assignment of Errors, and Prayer for Reversal—Filed April 15, 1943

The Plaintiff, Charles M. Thomson, as Trustee of the property of the Chicago and North Western Railway Com-

pany, a corporation, considering himself aggrieved by the final decision, judgment and order of the specially constituted three-judge district court entered in the above entitled cause on March 19, 1943, presents this petition that an appeal be allowed to the Supreme Court of the United States herein; and plaintiff herewith presents his assignment of errors and prayer for reversal.

ASSIGNMENT OF ERRORS

Said plaintiff asserts and assigns the following errors in the record and proceedings in said cause:

1. The Court erred in sustaining the Interstate Commerce Commission's report and order entered under date of November 26, 1941, collectively referred to herein as the order, in Docket No. MC 42614, *Chicago & N. W. Ry. Co. Common Carrier Application*, 31 M. C. C. 299, which order [fol. 376] misconstrues and misapplies the Motor Carrier Act, 1935, particularly sections 203 (14), 206, and 207 (U. S. C., title 49, sec. 303, 306, and 307).

2. The Court erred in making and entering findings of fact and conclusions of law in favor of defendants and against plaintiff.

3. The Court erred in entering its judgment and decree dismissing the complaint.

4. The Court erred in Finding Number 2 that the motor vehicle operations involved herein are conducted through the use of vehicles provided by independent motor carriers.

5. The Court erred in Finding Number 3 that there is substantial evidence in the record of the Interstate Commerce Commission to support the findings and conclusions as stated in the Commission's order entered November 26, 1941.

6. In its Conclusion of Law Number 2, the Court erred in construing and applying the so-called "grandfather" clause of the Motor Carrier Act, 1935 (U. S. C., title 49, sec. 306), as including a requirement that one applying for a certificate thereunder as a common carrier by motor vehicle must establish that he had assumed responsibility to the public as to public liability and property damage resulting from the operation of motor vehicles over highways; and the

Court erred in adopting the statements and conclusions found in the Commission's order in this behalf.

7. The Court erred in failing to find that the operations of plaintiff and his predecessors conformed to its Conclusion of Law Number 2 in substance that operations entitling an applicant to a grandfather certificate as a common carrier by motor vehicle under section 206 (a) of the Motor Carrier Act, 1935 (U. S. C., title 49, sec. 306), are bona fide operations over which applicant exercised direction and control and for which applicant assumed responsibility to [fol. 377] the public, both as to cargo and as to public liability and property damage resulting from operation of motor vehicles over highways.

8. The Court erred in basing its Conclusion of Law Number 2 on the erroneous assumption, contrary to the evidence and the law, that the plaintiff and his predecessors were not common carriers within the meaning of Motor Carrier Act, 1935.

9. The Court erred in entering Conclusion of Law Number 3 that the order of the Commission entered November 26, 1941, is lawful and within the statutory authority of the Commission.

10. The Court erred in entering Conclusion of Law Number 4 that the aforesaid order of the Commission is supported by substantial evidence in the Commission record.

11. The Court erred in entering its Conclusion of Law Number 5 that plaintiff was given a full and fair hearing by the Commission upon its application and in connection with the aforesaid report and order.

12. The Court erred in entering its Conclusion of Law Number 6 that no constitutional right of plaintiff has been violated by the aforesaid report and order and plaintiff has suffered no damage by reason thereof.

13. The Court erred in entering its Conclusion of Law Number 7 that the complaint is without merit and should be dismissed at the cost of the plaintiff.

14. The Court erred in sustaining the aforesaid order and in failing to find and hold the order unlawful and void

because the Commission ignored the legislative standards prescribed by the Congress in Motor Carrier Act, 1935, particularly sections 203 (14), 206 (a), and 207 (a), and based its order upon arbitrary concepts and supposed Standards outside and beyond the terms and provisions of [fol. 378] the applicable statute as enacted by the Congress.

15. The Court erred in sustaining the Commission's order and thus approving and adopting, among other erroneous, unreasonable, arbitrary, and unlawful acts of the Commission, the following:

(a) In finding that the plaintiff and his predecessors did not operate motor vehicles, either as owner or under a lease, or any other equivalent arrangement.

(b) In finding that contracts with certain owners or possessors of motor vehicles (through which the common motor carrier service of plaintiff and his predecessors was arranged for and carried out) impose upon them obligations ordinarily assumed by common carriers by motor vehicle, and in basing its conclusions upon provisions of the contracts which are of no significance and not controlling of the issues here presented.

(c) In finding that the motor vehicles were under the complete direction, control and domination of the contractors, notwithstanding the undisputed evidence of record before the Commission and the Court is that in every actual and legal sense material to this inquiry plaintiff and his predecessors directed and controlled the common motor carrier service being rendered through the instrumentalities of these vehicles in the transportation of freight for the public.

(d) In holding that the contractors were responsible to shippers of the freight, whereas the undisputed evidence before the Commission and the Court shows that the shippers' arrangements and contracts for the transportation of the freight were and are solely with the plaintiff and his predecessors who were and are fully responsible to the shippers to the exclusion of the contractors.

[fol. 379] (e) In finding that the operations considered were those of the contractors as common carriers by motor vehicle in their own right, notwithstanding the undisputed

evidence before both the Commission and the Court established that because of the absence of the essential elements of common carriage, it must be found as a matter of law that these contractors were not common carriers of this traffic.

(f) In requiring plaintiff to discontinue operations which he and his predecessors have been conducting for the public for a period of years, the effect of the order being to deprive plaintiff of property without due process of law and the public of a useful and urgently needed service.

(g) In going outside the record and denying the entire application on the assumption, unsupported by evidence of record, that all the so-called contractors were established truckers who had filed applications claiming grandfather rights with respect to the motor vehicle operations involved in carrying applicant's freight.

(h) In failing to find in accordance with the undisputed evidence that plaintiff's predecessor in interest instituted and thereafter carried on, through the agencies and instrumentalities of the contractors, their equipment and employes, the several motor vehicle operations designated in the application, under the contracts shown of record, and thereby plaintiff's predecessors were rendering a bona fide common motor carrier service and conducting a bona fide operation thereof, on June 1, 1935, which has since been continued to the present time; and in failing to grant a certificate under section 206 (a), Motor Carrier Act, to plaintiff in accord with such findings.

(i) In basing the order on inadequate and insufficient [fol. 380] findings of fact, particularly in denying the entire application on the theory that each of the so-called contractors were common carriers of this traffic without a specific finding as to each of the contractors involved in the several widely separated operations.

(j) In failing to find and hold that, in view of the theory of the report and order that the Railway Company was not a common carrier, the transportation was rendered by the Railway Company as a private carrier and thus is not subject to regulation.

(k) In completely disregarding and failing to give any consideration or legal effect to plaintiff's claim of right

to a certificate of public convenience and necessity and the undisputed evidence supporting such right, under sections 206 and 207, Motor Carrier Act, and independent of the claimed right under the so-called "grandfather" provisions; and in failing to grant a certificate of public convenience and necessity for proposed future operations by plaintiff independent of the "grandfather" rights.

16. The Court erred in failing to find and hold that the aforesaid order shows on its face that it is based on assumptions and conclusions of fact without support in the evidence of record; and that the conclusions of the order are not supported by the facts therein found and stated.

17. The Court erred in failing to find and hold that the aforesaid order if not set aside would operate to deprive plaintiff of his property without due process of law and deny him equal protection of the laws, in violation of the Fifth Amendment of the Constitution of the United States, because the order is

(a) Contrary to undisputed evidence.

(b) Based upon assumed facts not in evidence.

[fols. 381-382] (c) Based upon failure to give due legal effect to undisputed evidence.

(d) Based upon insufficient findings of fact.

(e) Contrary to law.

18. The Court erred in failing to enter findings of fact and conclusions of law and judgment and decree setting aside the aforesaid order and perpetually enjoining enforcement thereof.

PRAYER FOR REVERSAL

Wherefore, because of the errors above assigned, plaintiff prays that this appeal be allowed, that a citation in proper form be issued, that bond be fixed in the amount of \$500.00, and that bond in that amount tendered herewith be approved and ordered filed, and that said decision, judgment and order of the United States District Court for the Northern District of Illinois, Eastern Division, entered March

19, 1943, in the above entitled cause be reversed and judgment rendered in favor of said plaintiff and for costs.

Dated at Chicago, Ill., this 15th day of April, 1943.

Nye F. Marehouse, P. F. Gault, Attorneys for Plaintiff-Appellant.

[fol. 383] IN DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL AND APPROVING BOND —

Plaintiff, Charles M. Thomson, as Trustee of the property of the Chicago and North Western Railway Company, in the above entitled cause, having presented to this Court a petition praying for the allowance of an appeal in this cause to the Supreme Court of the United States from judgment and order made and entered by this Court on March 19, 1943, and each and every part thereof, and having presented and filed with said petition for appeal an assignment of errors and prayer for reversal, and having presented an appeal and supersedeas bond in proper form, pursuant to the statutes and rules of court in such case made and provided,

It Is Ordered:

That an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the District Court of the United States in the above entitled cause as provided by law; that such appeal shall operate as a supersedeas and stay in accordance with the order of court previously entered herein; and that a citation be issued, and that the Clerk of this Court be and he is hereby ordered to [fols. 384-385] prepare a certified record of the proceedings in the above entitled cause and transmit same to the Clerk of the Supreme Court of the United States, as under the rules of the Supreme Court in such cases made and provided.

It is further ordered that the appeal and supersedeas bond on this appeal be, and the same hereby is, fixed at the sum of Five Hundred Dollars (\$500), the condition thereof being that appellant shall prosecute his appeal to effect and answer all damages and costs incurred if he fail to make his plea good therein, and further, that the appeal and supersedeas bond so conditioned and in the penal sum of